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*First.*—See CONSTITUTIONAL LAW, 16;

*Fourteenth.*—See CONSTITUTIONAL LAW;

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#### ANTI-TRUST ACT.

1. *Construction; attitude of court.*

This court can see no reason for reading into the Sherman Act more than it finds there. *Nash v. United States*, 373.

2. *Criminal provisions; conspiracy; sufficiency of indictment.*

It is not necessary for an indictment under the Sherman Act to allege or prove that all the conspirators proceeded against are traders. (*Loewe v. Lawlor*, 208 U. S. 274.) *Ib.*

3. *Criminal provisions; conspiracy; indictment; sufficiency of evidence under.*

Where the indictment under the Sherman Act alleges numerous methods employed by the defendants to accomplish the purpose to restrain trade, it is not necessary, in order to convict, to prove every means alleged, but it is error to charge that a verdict may be permitted on any one of them when some of them would not warrant a finding of conspiracy. *Ib.*

4. *Criminal provisions; conspiracies within; sufficiency of indictment.*

The Sherman Act punishes the conspiracies at which it is aimed on the common law footing and does not make the doing of any act other than the act of conspiring a condition of liability. In this respect it differs from § 5440 and the indictment need not aver overt acts in furtherance of the conspiracy. *Brown v. Elliott*, 225 U. S. 392, distinguished. *Ib.*

5. *Criminal provisions; uncertainty as to prohibitions.*

In many instances a man's fate depends upon his rightly estimating, that is as the jury subsequently estimates it, some matter of degree, and there is no constitutional difficulty in the way of enforcing the criminal provisions of the Sherman Anti-Trust Act on the ground of uncertainty as to the prohibitions. *Ib.*

## APPEAL AND ERROR.

1. *Appeal from Circuit Court of Appeals; sufficiency of involution of constitutional questions.*

While the jurisdiction of the Circuit Court in a case where diverse citizenship exists may also rest upon the fact that the case is one arising under the Constitution of the United States, in which case there is an appeal from the judgment of the Circuit Court of Appeals, that is not the case where the alleged infractions of the Constitution are without color of merit, or are anticipatory of defendant's defense. *Denver v. New York Trust Co.*, 123.

2. *Finality of decree for purposes of.*

The test of finality of a decree for the purposes of appeal to this court is the face of the decree itself, and unless it is final the appeal will not lie. *Paducah v. East Tennessee Telephone Co.*, 476.

3. *Finality of decree continuing injunction, for purposes of appeal.*

A decree which continues an injunction against a municipality unless it adopts an ordinance specified therein *held* not final prior to the passage of the ordinance or declaration *not* to do so, and appeal dismissed as premature. *Ib.*

See COURTS, 3; JURISDICTION;  
EXTRADITION, 11; PRACTICE AND PROCEDURE.

APPEARANCE.

See ATTACHMENT, 1, 4.

ARMY AND NAVY.

1. *Naval officers; retirement of; pay to which entitled.*

A naval officer who had been retired under § 23 of the act of 1861 for disability not originating in the line of duty and afterwards transferred to the three-quarter pay list under § 1558, Rev. Stat., by authority of a special act of Congress, *held*, not entitled to advanced pay to which officers retired on account of wounds or disability incident to the service are entitled under the act of June 29, 1906. *Morse v. United States*, 208.

2. *Naval officers; retirement; effect of special act of Congress to change status.*

There being nothing in the record to show that any injustice was done by the Retiring Board in retiring an officer of the navy for disability not originating in the line of duty, a special act of Congress subsequently passed for his relief and placing him on a list by which he receives increased pay, will not be construed as one relieving him from wrong and injustice and giving him the benefits of officers retired for disabilities incident to the service. *Ib.*

ASSESSMENT OF BENEFITS.

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ASSUMPTION OF RISK.

See INSTRUCTIONS TO JURY, 1.

ATTACHMENT.

1. *Jurisdiction of Circuit Court to issue.*

A Circuit Court of the United States has no jurisdiction to issue an order of attachment in a case where no personal service can be had upon the defendant and where there has been no personal appearance in the action. *Big Vein Coal Co. v. Read*, 31.

2. *Jurisdiction of Circuit Court; effect of § 915, Rev. Stat., and act of March 3, 1887, as amended.*

Neither under § 915, Rev. Stat., nor under any provision of the act of March 3, 1887, as amended August 13, 1888, can the auxiliary remedy by attachment be had in a Circuit Court of the United States where that court cannot obtain jurisdiction over the defendant personally. *Ib.*

3. *Jurisdiction of Federal courts to grant; non-service of defendant; effect of act of March 3, 1887, as amended.*

This court will not construe an amendment to the judiciary statute as making such a radical change as granting a new remedy unless provision is clearly made for making the remedy effective; and so held, that as Congress did not in the act of March 3, 1887, as amended August 13, 1888, make any provision for service by publication, the act will not be construed as giving jurisdiction to Federal courts to grant attachments in cases where the defendant cannot be served. *Ib.*

4. *Jurisdiction of Federal courts to grant; effect of special appearance of defendant.*

In the Federal courts an appearance may be made for the sole purpose of raising jurisdictional questions without thereby submitting to the jurisdiction of the court over the action; and where, as in this case, no issue involving the merits was made, a special appearance to object to the jurisdiction does not give the court jurisdiction to issue an attachment. *Ib.*

5. *Incidental nature of; power of Federal courts to issue.*

An attachment is still but an incident to a suit and unless jurisdiction can be obtained over the defendant, his estate cannot be attached in a Federal court. *Ib.*

## BANKRUPTCY.

1. *Assets; property wrongfully converted as.*

No creditor of the bankrupt can demand that the estate of the bankrupt be augmented by the wrongful conversion of property of another, or the application to the general estate of property which never rightfully belonged to the bankrupt. *Gorman v. Littlefield*, 19.

2. *Brokers; right of customers to stock certificates; materiality of identity of certificates.*

Where the trustee of a bankrupt broker finds in the estate certificates

for shares of a particular stock legally subject to the demand of the customer for whom shares of that stock were bought by the bankrupt, the customer is entitled to the same although the certificates may not be the identical ones purchased for him. (*Richardson v. Shaw*, 209 U. S. 365.) *Ib.*

3. *Brokers; right of customers to stock certificates; presumption as to identity of certificates.*

Where there are in the bankrupt's possession certificates for enough shares of a particular stock to satisfy the legal demand of a customer for whom shares of that stock were purchased, and no other customer can legally demand any shares of that stock, those certificates will be presumed to be the certificates kept by the bankrupt in accordance with his duty so to do to satisfy the demand of such customer. *Ib.*

4. *Brokers; duty to customers to replace securities used; effect to deplete estate.*

It is the right and duty of the bankrupt, if he uses securities belonging to a customer, to use his own funds to replace such securities with others of the same kind, and in so doing he does not deplete the estate against his other creditors. *Ib.*

5. *Brokers; stock certificates in possession of; presumption as to title.*

There is no presumption that certificates of stock in the possession of the bankrupt were embezzled or stolen, but there is a presumption that such certificates were bought and paid for out of his own funds to replace those which he had used belonging to a customer. *Ib.*

6. *Exemptions under § 70f of Bankruptcy Act; interest of trustee in.*

While title to property exempted under § 70f does not vest in the trustee, it does pass to him as part of the bankrupt's estate for the purposes named elsewhere in the statute, including the duty of segregation, identification and appraisal. *Chicago, B. & Q. Ry. Co. v. Hall*, 511.

7. *Exemptions under § 67f of Bankruptcy Act; waiver of.*

Section 67f does not defeat rights in exempt property acquired by contract or waiver of exemption; but where, as in this case, there has been no waiver, no rights can be acquired. *Lockwood v. Exchange Bank*, 190 U. S. 294, distinguished. *Ib.*

8. *Exempt property; liens on; effect of § 67f of Bankruptcy Act to annul.*
- The decisions of the state and lower Federal courts in regard to annul-

ment of liens on exempt property have been conflicting, and this court now holds that § 67f annuls all such liens obtained within four months of the filing of the petition, both as against the property which the trustee takes for benefit of creditors and that which may be set aside to the bankrupt as exempt. *In re Forbes*, 186 Fed. Rep. 76, approved. *Ib.*

9. *Jurisdiction of bankruptcy court over estate situated in States other than that in which court sits; application of act of 1893, relative to sales of real estate.*

The bankruptcy court is not confined in the administration of the property of the bankrupt to state or district boundaries; nor is it necessary to institute independent or ancillary proceedings in the different States in which the bankrupt's property is situated, or to conform to the provisions of the act of 1893 prescribing the method of selling real estate under orders and decrees of courts of the United States. *Robertson v. Howard*, 254.

10. *Preferential transfer; what constitutes.*

To constitute a preferential transfer within the meaning of the Bankruptcy Act of 1898 there must be a parting with the bankrupt's property for the benefit of the creditor and a consequent diminution of the bankrupt's estate. (*Newport Bank v. Herkimer Bank*, 225 U. S. 178.) *Continental Trust Co. v. Chicago Title Co.*, 435.

11. *Preferential transfer; consideration in determining.*

In determining whether there has been a preferential payment, the nature of the property transferred is not as essential as the facts showing exactly what transpired between the parties. *Ib.*

12. *Preferential transfer; effect of arrangement which does not diminish estate of bankrupt.*

The arrangement involved in this action, made between a bank and a grain broker, in regard to transferring certificates of deposit held as collateral for dealings in grain on the Chicago Board of Trade, do not appear to have in any way diminished the estate and held not to have amounted to an illegal preference. *Ib.*

13. *Preferences; status of bank with reference to.*

Nothing in the Bankruptcy Act deprives a bank with which the insolvent is doing business of the rights of any other creditor taking money without reasonable cause to believe that a preference will result. *Studley v. Boylston National Bank*, 523.



14. *Preferences; right of bank to set-off deposits against notes.*

In this case it having been found that the deposits and payments of notes were not made to enable the bank to secure a preference by the right of set-off, the bank had a right under its agreement to set off the deposits against the notes within four months of the bankruptcy. (*New York County Bank v. Massey*, 192 U. S. 138.) *Ib.*

15. *Sales of real estate; application of act of 1893.*

General Order XVIII in Bankruptcy does not contemplate that the act of 1893 be followed in sales of real estate. *Robertson v. Howard*, 254.

16. *Sales of real estate; irregularities cured by confirmation.*

After sale of real estate by the trustee and confirmation by the referee, lack of appraisal and error of description in published notice are mere irregularities cured by the order of confirmation and validated under § 70b of the Bankruptcy Act, and the conveyance cannot be attacked collaterally. *Ib.*

17. *Set-offs under § 68a of Bankruptcy Act.*

Section 68a of the Bankruptcy Act did not create the right of set-off but recognized its existence and provided a method for its enforcement even after bankruptcy. *Studley v. Boylston National Bank*, 523.

18. *Set-off; right of, under Bankruptcy Act; relation of act to banking.*

The right of set-off is recognized by the Bankruptcy Act and it cannot be taken away by construction because of possibility of its abuse; nor will the act be so construed by denying such right as to make banks hesitate to carry on business and thus produce evils of serious consequence. *Ib.*

19. *Set-offs; purpose of § 68a of Bankruptcy Act to prevent.*

The purpose of § 68a of the Bankruptcy Act is to prevent debtors of the bankrupt from acquiring claims against him for use by way of set-off and reduction of their indebtedness by way of set-off; but the transaction in this case does not come under § 68a. *Western Tie & Timber Co. v. Brown*, 196 U. S. 502, distinguished. *Continental Trust Co. v. Chicago Title Co.*, 435.

20. *Trustee's title; estate vested in; right of administration.*

The effect of adjudication in bankruptcy is to transfer title of all of the property of the bankrupt wheresoever situated and vest the

same in the trustee, who has the right to administer the same under the authority of the court. *Robertson v. Howard*, 254.

See CONSTITUTIONAL LAW, 17, 18.

### BANKS AND BANKING.

1. *Collections; when collecting and crediting check equivalent to payment in usual course.*

When a bank has performed the dual function of collecting and crediting a check the transaction is closed; and, in the absence of fraud or mutual mistake, the transaction is equivalent to payment in usual course as though presented to another bank and paid over the counter. (*National Bank v. Burkhardt*, 100 U. S. 686.) *American National Bank v. Miller*, 517.

2. *Notice to officer; imputation to bank.*

While knowledge of an officer of a bank of a fact which it is his duty to declare, and not his interest to conceal, is to be treated as that of the bank; where it is his interest to conceal such knowledge the law does not, by a fiction, charge the bank with such knowledge. *Ib.*

3. *Notice; knowledge of officer; presumptions as to disclosure to bank.*

There is a presumption that an officer of a bank will disclose his knowledge of matters which affect the bank and which it is not to his personal interest to conceal; and there is also presumption that he will not disclose those matters of which he has knowledge and which it is his interest to conceal, including his own bankruptcy and indebtedness to other banks. *Ib.*

4. *Notice; imputation to bank of knowledge of officer.*

A bank, on which the president of another bank just before his own bankruptcy drew a check in favor of the latter, cannot, after having paid the check by crediting it to the payee bank, cancel the credit and retain the money on the ground that the payee bank is to be imputed with constructive knowledge of its president's bankruptcy. *Ib.*

See BANKRUPTCY, 13, 14, 18;

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#### CERTIFICATE.

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#### CERTIFICATES OF STOCK.

See BANKRUPTCY, 2, 3, 4, 5;

STOCK AND STOCKHOLDERS.

#### CERTIORARI.

##### 1. *Nature of remedy; anticipation as to use.*

The writ of certiorari is an extraordinary remedy, and in deciding that it will not issue in a particular case this court does not anticipate in what cases exceptional facts may call for its use. *Degge v. Hitchcock*, 162.

##### 2. *Scope of writ in Federal jurisdiction.*

The scope of the writ of certiorari as it exists at common law has not been enlarged by any statute in the Federal jurisdiction, and cases in which it has issued under statute from state courts to state officers are not controlling in the Federal courts. *Ib.*

3. *Scope of writ; breadth of application.*

While the original scope of the writ of certiorari has been enlarged so as to serve the office of a writ of error, it has always run from court to court or to such boards, tribunals and inferior jurisdictions whose findings and decisions had the quality of a final decision and from which there was no appeal or other method of review. *Ib.*

4. *To review ruling by Federal executive officer.*

This is apparently the first case in which a Federal court has been asked to issue a writ of certiorari to review a ruling by an executive officer of the United States Government. *Ib.*

5. *Not available to review decision of Postmaster General as to issuance of fraud order.*

The decision of the Postmaster General that a fraud order shall issue is not the exercise of a judicial function, and if the decision is beyond his jurisdiction the party injured may obtain relief in equity; the order cannot be reviewed by certiorari. *Ib.*

*See JURISDICTION, A 10, 11.*

CHARTERS.

*See MUNICIPAL CORPORATIONS, 1, 3, 4.*

CHATTEL MORTGAGE.

*See RECORDATION OF INSTRUMENTS, 2.*

CHIPPEWA INDIANS.

*See INDIANS, 6, 7.*

CIRCUIT COURT OF APPEALS.

*See JURISDICTION, A 10, 11.*

CIRCUIT COURTS.

*See APPEAL AND ERROR, 1;  
ATTACHMENT;  
JURISDICTION, C.*

CLAIMS AGAINST THE UNITED STATES.

1. *Interest on; exemption; exclusion of subordinate agencies.*

The exemption of the United States from payment of interest on claims in the absence of authorized engagement to pay it does not extend to subordinate governmental agencies. *National Home v. Parrish, 494.*

2. *Interest; exemption; governmental agency not within.*

While no rule is now laid down for all governmental agencies, this court holds that the National Home organized under statute, now § 4825, Rev. Stat., is not exempt from payment of interest. *Ib.*

CLASSIFICATION FOR REGULATION.

*See* CONSTITUTIONAL LAW, 9, 10, 11, 13;  
MAILS, 1, 2.

CLASSIFICATION FOR TAXATION.

*See* CONSTITUTIONAL LAW, 14;  
TAXES AND TAXATION.

COLLATERAL ATTACK.

*See* BANKRUPTCY, 16.

COLLUSION.

*See* JURISDICTION, D 2.

COMMERCE.

1. *Control of; Federal or state; how determined.*

It is the essential character of the commerce, not the accident of local or through bills of lading, which determines Federal or state control thereover. *Louisiana Railroad Comm. v. Texas & Pacific Ry. Co.*, 336.

2. *Character as interstate or foreign.*

Commerce takes its character as interstate or foreign when it is actually started in the course of transportation to another State or to a foreign country. *Ib.*

3. *Character as interstate and foreign; effect of shipment on local bills of lading for initial journey.*

In this case staves and logs intended by the shippers to be exported to foreign countries and shipped from points within the State to a seaport also therein from which they were to be exported were in interstate and foreign commerce notwithstanding they were shipped on local bills of lading for the initial journey and were subject to interstate and not intrastate charges, and within Federal and not state jurisdiction. *Ib.*

*See* CONSTITUTIONAL LAW, 1;  
INTERSTATE COMMERCE.



## COMMON CARRIERS.

*See* EMPLOYERS' LIABILITY ACT, 3;      RATES;  
 INTERSTATE COMMERCE;      SAFETY APPLIANCE ACTS;  
 STATES.

## COMMON LAW.

*See* EMPLOYERS' LIABILITY ACT, 3.

## CONDEMNATION OF LAND.

*See* CONSTITUTIONAL LAW, 7;  
 EMINENT DOMAIN;  
 JURISDICTION, A 8.

## CONFLICT OF LAWS.

*See* CONSTITUTIONAL LAW, 18;      EMPLOYERS' LIABILITY ACT, 1. 9;  
 COURTS, 2;      PATENTS, 3.

## CONGRESS, ACTS OF.

*See* ACTS OF CONGRESS.

## CONGRESS, POWERS OF.

1. *Over joint stock associations; personification of.*

Congress has power to charge the assets of joint stock associations with liability and to personify them so far as to collect fines by proceeding against them in the respective names of the associations. *United States v. Adams Express Co.*, 381.

2. *Effect of decree of court on; quære as to.*

*Quære* what the effect is on subsequent action by Congress of a decree of a court in an action determining that a bridge was properly erected over a navigable stream pursuant to grant in an earlier act of Congress. *United States v. Baltimore & Ohio R. R. Co.*, 244.

3. *Grants; effect of, as limitation on power of Congress; quære as to.*

*Quære*, how far if at all a statutory grant to erect a bridge over navigable waters of the United States on specified terms in an act of Congress without reservation of the right to alter or amend, operates to limit Congress to directly legislate as to removal or alteration of such bridge. *Ib.*

*See* CONSTITUTIONAL LAW, 1;

MAILS, 1, 2;

NAVIGABLE WATERS, 2, 3, 6, 10, 13, 14, 15, 16.

## CONQUERED TERRITORY.

See INTERNATIONAL LAW, 1, 2;  
 PHILIPPINE ISLANDS;  
 STATUTES, A 10.

## CONSPIRACY.

See ANTI-TRUST ACT, 2, 3, 4.

## CONSTITUTIONAL LAW.

1. *Commerce clause; navigation within.*

Commerce includes navigation and it is for Congress to determine when and to what extent its powers shall be brought into activity. (*Gilman v. Philadelphia*, 3 Wall. 713.) *United States v. Chandler-Dunbar Co.*, 53.

2. *Contract impairment; what constitutes contract within; municipal ordinance as.*

An ordinance requiring a street railway company to comply with certain conditions on all of its lines until the expiration of the franchises of longest duration, *held* not to constitute a contract, extending all the franchises to the date of such expiration, within the protection of the contract clause of the Federal Constitution. *Detroit United Railway v. Detroit*, 39.

3. *Contract impairment; deprivation of property without due process of law; effect of municipal ordinance relative to use of streets by railway.*

Where a street railroad company is operating in the streets of a city for a definite period and has enjoyed the full term granted, the municipality may, upon failure of renewal of the grant, require the company within a reasonable time to remove its tracks and other property from the streets, without impairing any contractual obligation protected by the Federal Constitution or depriving the company of its property without due process of law. *Ib.*

See MUNICIPAL CORPORATIONS, 2.

4. *Due process of law; effect on power of State to regulate dangerous businesses.*

The legislature of the State is itself the judge of means necessary to secure the safety of those engaged in a dangerous business, and only such regulations as are palpably arbitrary can be set aside as violating the due process provision of the Fourteenth Amendment. *Barrett v. Indiana*, 26.

5. *Due process and equal protection of the laws; effect to deny, of exercise of police power in regulating a dangerous business.*

The statute of Indiana requiring entries in coal mines to be of a specified width was a reasonable exercise of the police power of the State in regulating a dangerous business and is not unconstitutional under the Fourteenth Amendment either as depriving the owners of bituminous coal mines of their property without due process of law or as denying them equal protection of the law because it expressly excepts block coal mines. *Ib.*

6. *Due process of law; effect to deny, of authority to municipality to erect public utility plant on refusal of owners of existing plant to accept offer therefor.*

Where the franchise of a water company has expired and the city has lawfully refused to purchase the plant at the appraised value, a charter amendment permitting the municipal authorities to offer the company less than such value and in case of non-acceptance to erect a municipal plant, does not violate the due process clause of the Fourteenth Amendment by subjecting the company to the alternative of accepting less than value for the plant or having it ruined by construction and operation of the municipal plant. *Denver v. New York Trust Co.*, 123.

7. *Due process of law; effect to violate, of judgment of state court in condemnation proceeding.*

The final judgment of a state court in condemnation proceedings should not be held to violate the due process provision of the Fourteenth Amendment unless the rulings of law prevented the owner from obtaining substantially any compensation. (*Appleby v. Buffalo*, 221 U. S. 524.) *McGovern v. New York*, 363.

8. *Due process of law; right to examination or opportunity therefor before accusation of crime.*

The "due process of law" clause of the Fourteenth Amendment does not require the State to adopt the institution and procedure of a grand jury; nor does it require an examination, or the opportunity for one, prior to a formal accusation by the district attorney by information. *Held* that the Information Law of 1899 of Oregon is not unconstitutional as denying due process of law. *Lem Woon v. Oregon*, 586.

See SUPRA, 3;                      EMINENT DOMAIN, 1;  
ANTI-TRUST ACT, 5;           STATES, 2.

*Eminent Domain.*—See EMINENT DOMAIN.

9. *Equal protection of the laws; scope of requirement; validity of classification.*

The equal protection provision of the Fourteenth Amendment requires laws of like application to all similarly situated, but the legislature is allowed wide discretion in the selection of classes. *Barrett v. Indiana*, 26.

10. *Equal protection of the laws; validity of classification of businesses under police power.*

A classification, in a police statute regulating operations in coal mines including bituminous coal mines and excluding block coal mines, is not so unreasonable or arbitrary as to justify the courts in overruling the legislature. *Ib.*

11. *Equal protection of the laws; judicial interference with police statute; when justifiable.*

Courts will not interfere with a police statute on the ground that the classification is so arbitrary as to deny equal protection of the laws unless it appears that there is no fair reason for the law that would with equal force not require its extension to others whom it leaves untouched. (*Missouri, Kansas & Texas Ry. v. May*, 194 U. S. 267.) *Ib.*

12. *Equal protection of the laws; effect of provision on power of municipality to adopt scheme of ownership of single public utility.*

The equal protection provision of the Fourteenth Amendment does not prevent a city from adopting a scheme of municipal ownership as to a single public utility, and a charter provision which prohibits franchises for that purpose does not violate the equal protection provision of the Fourteenth Amendment. *Denver v. New York Trust Co.*, 123.

13. *Equal protection of the law; classification prohibited; power of States.*

The State is not bound to rigid equality by the equal protection provision of the Fourteenth Amendment: classification simply must not be exercised in clear and hostile discrimination between particular persons and classes. *Citizens' Telephone Co. v. Fuller*, 322.

14. *Equal protection of the law; classification for taxation; validity of Michigan law taxing telephone companies.*

There is a clear and reasonable distinction on which to base a classification for taxation between telegraph and telephone corporations conducting for profit large businesses and having offices and exchanges in cities and villages, and those conducting a very small business for mutual convenience of the incorporators; and so held

that the Michigan statute taxing such smaller corporations does not deny the larger corporations the equal protection of the laws because it exempts corporations having gross receipts of less than five hundred dollars. *Ib.*

*See SUPRA*, 5.

15. *Ex post facto laws; effect of amendment of constitution of Oregon.*

*Ross v. Oregon*, 227 U. S. 150, followed to the effect that the subsequent amendment to the constitution of Oregon affecting prosecutions affected only prosecutions thereafter instituted and had no effect on those which had already been instituted although based on information. *Lem Woon v. Oregon*, 586.

16. *Freedom of the press; due process of law; mail facilities; effect as denial, of § 2 of Post Office Appropriation Act of 1912.*

The requirements in § 2 of the Post Office Appropriation Act of 1912 that certain specified information be presented to the Postmaster General and that all paid for matter, editorial and otherwise, be marked "advertisement" under penalty of exclusion from the privileges of the mail, *held* not to be an unconstitutional abridgment of the freedom of the press protected by the First Amendment or a denial of due process of law under the Fifth Amendment, or as a denial of the use of the mail, but only a requirement relating to second class mail matter sanctioned by exclusion from the privileges of the mail in that regard. *Lewis Publishing Co. v. Morgan*, 288.

*See* MAILS, 3.

17. *Full faith and credit; judgments entitled to; bankruptcy; garnishment.*

Property exempted under the laws of the State of the bankrupt cannot be garnisheed in another State where similar property is not exempted under a judgment obtained within four months of the filing of the petition; and, after notice of the bankruptcy proceedings, the garnishee is not protected in paying over under the judgment by the full faith and credit provision of the Federal Constitution. *Chicago, B. & Q. Ry. Co. v. Hall*, 511.

18. *Full faith and credit; application to state law; nullification of law by repugnance to Federal Bankruptcy Act.*

A state law relating to debts which is contrary to the provisions of the Federal Bankruptcy Act is nullified thereby, and when so nullified is not entitled to full faith and credit in the courts of other States under the Federal Constitution. *Ib.*

*Post offices and post roads.*—*See* MAILS.

*Generally.*—*See* NAVIGABLE WATERS, 2, 3, 15, 16.

## CONSTRUCTION.

See CONTRACTS; RECLAMATION OF ARID LANDS;  
PRACTICE AND PROCEDURE, 2, 7; STATUTES, A;  
TREATIES, 1.

## CONSTRUCTIVE NOTICE.

See BANKS AND BANKING, 2, 3, 4.

## CONTRACTS.

1. *Accounts; obligation to keep.*

One, who under an agreement is to be reimbursed for his outlay, should keep proper account of his receipts and disbursements and preserve the vouchers therefor. *Campbell v. Northwest Eckington Co.*, 561.

2. *Building; obligations embraced within; accounting.*

An agreement to give skill and experience as a builder and contractor does not necessarily imply that he is to personally act as superintendent of construction; nor, under the circumstances of this case, should his accounts be surcharged with the amounts paid for wages to a superintendent employed by him. *Ib.*

3. *Government; delivery under; what constitutes.*

Where a contractor is unable to make deliveries under a contract with the Government for continuous deliveries of a specified article and agrees with the properly authorized official to meet the emergency by delivering goods of a different class to be paid for according to actual value, the delivery is not one under the contract but is an emergency purchase, nor is an acceptance by the Government an acceptance under the contract; if the goods so delivered are not of the value of the goods contracted for the Government may offset the difference against future deliveries under the contract. *Barry v. United States*, 47.

4. *Government; emergency purchase contemplated by act of April 23, 1904.*

The failure, by reason of a strike, of contractors to deliver coal as required by a contract for continuous delivery for the Philippine Division, creates a condition contemplated by the act of April 23, 1904, providing for open market emergency purchases, and a purchase of coal other than that contracted for so made from the contractor is an emergency purchase and not an outside purchase to meet contractor's default and accepted as fulfilment. *Ib.*

5. *Government; right to offset against one of two contracts.*

Where a contractor is indebted to the Government under one contract

the Government may offset without separate action an amount owing by that contractor under another contract. *Ib.*

6. *Parol variation or modification of written instrument; what constitutes.*  
An extension verbally agreed to for completing the record title to the property where the contract to convey expressly provides for such an extension without specifying its length in case defects are developed, is not a parol variation or modification of a written contract. *Citizens' National Bank v. Davison*, 212.

See CONSTITUTIONAL LAW, 2, 3; JURISDICTION, A 11;  
ESCROW; PRACTICE AND PROCEDURE, 8;  
INDIANS, 1, 2; PRINCIPAL AND SURETY.

### CONTRIBUTORY NEGLIGENCE.

See EMPLOYERS' LIABILITY ACT, 2, 3;  
NEGLIGENCE, 2, 3.

### CONVEYANCES.

1. *Consideration; effect of deed as conveyance of present or contingent interest.*

A deed for an undivided interest in unimproved real estate heavily encumbered given to a third party in pursuance of prior agreements to undertake to aid in the financial and practical development of the property *held* to have been given for the undertaking and not for the performance and to have presently vested the grantee with the interest conveyed absolutely as stated on its face and not by way of security only. *Campbell v. Northwest Eckington Co.*, 561.

2. *Evidence to modify prima facie effect; burden of proof; effect of pleading.*

The burden is on the complainant seeking to give a different effect to a deed than that of its face and where the bill does not waive an answer under oath, and defendant does answer under oath, weight must be given to the answer. (*Vigil v. Hopp*, 104 U. S. 441.) *Ib.*

3. *Setting aside; evidence to justify.*

To justify the setting aside of a solemn instrument of conveyance deliberately made by parties *sui juris* and giving it an effect different from its plain purport, the evidence should be clear, unequivocal and convincing. (*Maxwell Land Grant Case*, 121 U. S. 325, 381.) *Ib.*

See BANKRUPTCY, 16; PRINCIPAL AND SURETY, 2;  
EQUITY, 4; REAL PROPERTY, 1.  
RECORDATION OF INSTRUMENTS, 2.

## COPYRIGHTS.

See PATENTS, 3, 8, 9.

## COURT AND JURY.

See NEGLIGENCE, 4.

## COURTS.

1. *Application of § 723, Rev. Stat., as to suits in equity.*

Section 723, Rev. Stat., declaring that suits in equity shall not be sustained where a plain, adequate and complete remedy may be had at law, by its own terms applies only to courts of the United States; and *quære* whether it applies to a territorial court, the procedure of which has been prescribed according to the law of an adjoining State, and to c. 18, Rev. Stat., which does not include § 723. *Dill v. Ebey*, 199.

2. *Duty of state court where case controlled by Federal statute under which recovery cannot be had.*

Where plaintiff's petition states a case under the state statute, but on the evidence it appears that the case is controlled by the Federal statute, and the defendant has duly excepted, the state court is bound to take notice of the objection and dismiss if plaintiff is not entitled to recover under the Federal statute. *St. Louis, S. F. & T. Ry. Co. v. Seale*, 156.

3. *Federal; without power to direct judgment non obstante veredicto.*

A Federal court is without authority to reverse a judgment in favor of one party and direct a judgment in favor of the other *non obstante veredicto*. (*Slocum v. New York Life Ins. Co.*, 228 U. S. 364.) *Pedersen v. Delaware, L. & W. R. R. Co.*, 146.

4. *Interference with proceeding before executive officer.*

So long as proceedings before an executive officer are *in fieri* the courts will not interfere with them. (*Plested v. Abbey*, 228 U. S. 42.) *Degge v. Hitchcock*, 162.

5. *Reference to messages and papers of Presidents.*

Messages and papers of the Presidents may be referred to by the courts as matters of public history. *MacLeod v. United States*, 416.

6. *State; question for determination of; power of state officers as.*

Whether state officers have power to grant a parole under a state indeterminate sentence act, and under what conditions, are for the state court to finally determine. *Adams v. Russell*, 353.



7. *State; question for determination of; construction of state statute as.*  
Whether a state statute allowing prisoners a reduction for "good time" is part of an indeterminate sentence act is for the state court to determine, and in this case it is a substantial local question on which to rest the judgment of the state court. *Ib.*

*See* CONSTITUTIONAL LAW, 11; PATENTS, 2;  
EXTRADITION, 4; REMEDIES;  
GOVERNMENTAL POWERS; REMOVAL OF CAUSES;  
JURISDICTION; TREATIES, 1;  
NAVIGABLE WATERS, 4, 14; TRUSTS AND TRUSTEES;  
WILLS, 3.

### CRIMINAL APPEALS ACT.

*See* JURISDICTION, A 12.

### CRIMINAL LAW.

1. *Opium trade; manufacturing within meaning of § 36 of McKinley Tariff Law.*

The mere mixing of smoking opium with the residue of opium that has been smoked, and heating the same, is not a manufacture of opium for smoking purposes within the meaning of § 36 of McKinley Tariff Law of October 1, 1890. *United States v. Shelley*, 239.

2. *Opium trade; scope of prohibition in § 36 of McKinley Tariff Law.*

The prohibition against manufacturing smoking opium under § 36 of the Tariff Act of 1890 is not more extensive than the clause taxing the article; and if the article produced is not taxable thereunder there is no violation thereof in its production. *Ib.*

*See* ANTI-TRUST ACT, 2, 3, 4, 5; COURTS, 6, 7;  
CONGRESS, POWERS OF, 1; EXTRADITION;  
CONSTITUTIONAL LAW, 8; INTERSTATE COMMERCE, 3;  
STATUTES, A 7.

### CUSTOM.

*See* NEGLIGENCE, 4.

### CUSTOMS DUTIES.

*See* PHILIPPINE ISLANDS, 2, 3, 4, 5, 6.

### DAMAGES.

*See* EMPLOYERS' LIABILITY ACT, 2;  
INDIANS, 7;  
NEGLECT, 3.

## INDEX.

## DEBTOR AND CREDITOR.

*See* BANKRUPTCY;  
WILLS, 1, 2.

## DEEDS.

*See* BANKRUPTCY, 16;      PRINCIPAL AND SURETY, 1;  
CONVEYANCES;      REAL PROPERTY, 1;  
RECORDATION OF INSTRUMENTS, 2.

## DEFENSES.

*See* EXTRADITION, 10.

## DELEGATION OF POWER.

*See* NAVIGABLE WATERS, 2;  
STATES, 2.

## DEPARTMENTAL CONSTRUCTION.

*See* STATUTES, A 4.

## DISCHARGE OF SURETY.

*See* PRINCIPAL AND SURETY.

## DISTRICT OF COLUMBIA.

1. *Auditor of; accountability for public moneys and default of subordinates.*

Prior to the making of the order of June 13, 1888, establishing the Permit Fund, there was no law, rule or regulation making the Auditor of the District of Columbia accountable for public moneys, nor is there anything in that order or in the act of March 3, 1891, c. 246, imposing responsibility on the Auditor for faults of the disbursing clerk provided for therein or of the pay clerk referred to in said order. *District of Columbia v. Petty*, 593.

2. *Street improvement; permit system; status of money received by Commissioners for.*

Moneys received by the Commissioner of the District of Columbia from citizens for street improvements under the permit system were not public moneys in any legal sense, but funds of private citizens held extra-officially by the public officers. *Ib.*

## DUE PROCESS OF LAW.

*See* CONSTITUTIONAL LAW, 3, 4, 5, 6, 7, 8;  
EMINENT DOMAIN, 1;  
STATES, 2.

DUTIES ON IMPORTS.

*See* PHILIPPINE ISLANDS, 2-6.

EJECTMENT.

*See* EQUITY, 1.

ELECTION.

*See* MUNICIPAL CORPORATIONS, 5.

EMBEZZLEMENT.

*See* BANKRUPTCY, 5.

EMINENT DOMAIN.

1. *What constitutes a taking; effect of deepening of channel in interests of navigation as taking of oyster bed affected.*

The deepening, in the interest of navigation, of a channel across a navigable bay, the bed of which is used for oyster cultivation under grants from the State, is not a taking of the property of the lessee of the oyster beds within the meaning of the Fifth Amendment. *Lewis Blue Point Oyster Co. v. Briggs*, 82.

2. *Compensation to which owner of upland taken for improvement of navigable river entitled.*

An owner of upland bordering on a navigable river which is taken under condemnation by the Government for the purpose of improving navigation is entitled to compensation for the fair value of the property, but not to any additional values based upon private interest in the potential water power of the river. *United States v. Chandler-Dunbar Co.*, 53.

3. *Compensation to satisfy Fifth Amendment.*

The Fifth Amendment is satisfied by payment to the owner of what he actually loses; it does not demand what the taker has gained. (*Chamber of Commerce v. Boston*, 217 U. S. 189.) *Ib.*

4. *Compensation to which owner of property taken for improvement of navigation entitled.*

One whose property is taken by the Government for improvement of the navigation of the river on which it borders is not entitled to the probably advanced value by reason of the contemplated improvement. The value is to be fixed as of the date of the proceedings. *Ib.*

5. *Compensation; considerations in appraisal of land taken.*

One whose land is taken by the Government for a particular purpose is entitled to have the fact that the land is peculiarly available for such purpose considered in the appraisal. (*Boom Co. v. Patterson*, 98 U. S. 403.) *Ib.*

6. *Compensation; where land taken includes streets title to which is in Government.*

Where a survey of a town site has not been carried out the title of the streets does not pass out of the United States and the value of the street cannot be added to that of the abutting property in condemnation proceedings at the instance of the United States. *Ib.*

7. *Compensation; effect of additional value resulting from improvement for which land is taken.*

The owner of a separate parcel is not entitled to additional value resulting as part of a comprehensive scheme of improvement, requiring the taking of his and other property. (*Chamber of Commerce v. Boston*, 217 U. S. 189.) *Ib.*

8. *Compensation; strategic value of property taken not considered.*

"Strategic value" cannot be allowed in condemnation proceedings; the value of the property to the Government for a particular use is not the criterion. The owner is compensated when he is allowed full market value. *Ib.*

9. *Compensation; owner entitled to what.*

The owner of property taken in eminent domain proceedings is entitled to be paid only for what is taken as the title stands, *Chamber of Commerce v. Boston*, 217 U. S. 189; hypothetical possibilities of change cannot be considered. *United States v. Chandler-Dunbar Water Co.*, ante, p. 53, followed, and *Boom Co. v. Patterson*, 98 U. S. 403, distinguished. *McGovern v. New York*, 363.

10. *Compensation; discretion of trial court as to admissibility of evidence of values.*

A wide discretion is allowed the trial court in regard to admission of evidence as to the value of property taken by eminent domain, and this court will not interfere on the ground of denial of due process of law where there was no plain disregard of the owner's rights. *Ib.*

11. *Compensation; speculative values.*

Enhanced value of property as a part of a great public work depends upon the whole land necessary being taken therefor. The chance

that all the property necessary can be acquired without the exercise of eminent domain is too remote and speculative to be allowed. (*C., B. & Q. Ry. v. Chicago*, 166 U. S. 226.) *Ib.*

12. *Compensation; wrong in; imputation to court and not to statute.*

Where the state statute requires condemnation commissioners to determine the just and equitable compensation, any wrong done, so far as amount is concerned, is due not to the statute, but to errors of the court as to evidence or measure of damages. *Ib.*

13. *Effect of proceeding as concession of title in party proceeded against.*

Where the state of the title and pending litigation affecting it is set up in the pleadings, the fact that the Government seeks condemnation of the property does not amount to conceding that the title is in the party claiming it and against whom the proceeding is directed. In this case all rights were reserved. *United States v. Chandler-Dunbar Co.*, 53.

See CONSTITUTIONAL LAW, 7;

JURISDICTION, A 8;

NAVIGABLE WATERS, 7, 8, 15, 16.

## EMPLOYER AND EMPLOYÉ.

See EMPLOYERS' LIABILITY ACT;      INSTRUCTIONS TO JURY, 1;  
HOURS OF SERVICE LAW;      MASTER AND SERVANT.

## EMPLOYERS' LIABILITY ACT.

1. *Application dependent upon existence of interstate commerce.*

Whether the Federal or state statute is applicable depends upon whether the injuries of the employé were sustained while the company was engaged and the employé was employed in interstate commerce. *St. Louis, S. F. & T. Ry. Co. v. Seale*, 156.

2. *Contributory negligence; diminution of damages; sufficiency of instruction.*

An instruction that contributory negligence of the employé goes by way of diminution of damages, held not error because the statute says that in such a case the jury must diminish the damages, it appearing that the words objected to followed an instruction that the damages in such a case shall be diminished by the jury, and the words objected to were meant to give effect to, and not to qualify, the previous instruction. *Norfolk & Western Ry. Co. v. Earnest*, 114.

3. *Contributory negligence provision; effect to abrogate common-law rule as to exoneration of master.*

The purpose of the provision regarding contributory negligence in Employers' Liability Act is to abrogate the common-law rule of complete exoneration of the carrier from liability in case of any negligence whatever on the part of the employé and to substitute therefor a new rule confining the exoneration to a proportional part of the damages corresponding to the amount of negligence attributable to the employé. *Ib.*

4. *Recovery under; existence of interstate commerce essential.*

Under the Employers' Liability Act a right of recovery exists only where the injury is suffered while the carrier is engaged in interstate commerce and while the employé is employed in such commerce; but it is not essential that the co-employé causing the injury be also employed in such commerce. *Pedersen v. Delaware, L. & W. R. R. Co.*, 146.

5. *Recovery under; who entitled; when engaged in interstate commerce.*

One engaged in the work of maintaining tracks, bridges, engines or cars in proper condition after they have become and during their use as instrumentalities of interstate commerce, is engaged in interstate commerce, and this even if those instrumentalities are used in both interstate and intrastate commerce. *Ib.*

6. *Recovery under; who entitled; when engaged in interstate commerce.*

One carrying materials to be used in repairing an instrumentality of interstate commerce is engaged in such commerce; and so held, that a railroad employé carrying bolts to be used in repairing an interstate railroad and who was injured by an interstate train is entitled to sue under the Employers' Liability Act of 1908. *Ib.*

7. *Recovery under; who entitled to maintain action.*

Where the Federal Employers' Liability Act applies, no one but the injured employé or, in case of his death, his personal representative, can maintain the action. *St. Louis, S. F. & T. Ry. Co. v. Seale*, 156.

8. *Recovery under; who entitled; when engaged in interstate commerce.*

An employé whose duty is to take the numbers of, and seal up and label, cars, some of which are engaged in interstate, and some in intrastate, traffic, is directly and not indirectly engaged in interstate commerce. *Ib.*

9. *Supremacy over state statutes.*

Where the Federal Employers' Liability Act is applicable, the state

statute on the same subject is excluded by reason of the supremacy of the former. *Ib.*

### EQUAL PROTECTION OF THE LAW.

*See* CONSTITUTIONAL LAW, 5, 9-14.

### EQUITABLE ESTOPPEL.

*See* ESTOPPEL.

### EQUITY.

1. *Aid of, to enjoin maintenance of ejectment suits and adjudicate title.*

Parties in possession of land under titles from various sources and having the equitable, as well as the legal, title to a portion of it and the equitable, but not the legal, title to the remainder, may, under the circumstances of this case, properly invoke the aid of equity to restrain other parties from maintaining ejectment suits and to adjudicate the title to the entire tract in a single suit. *Camp v. Boyd*, 530.

2. *Attitude and functions.*

Equity regards that as done which ought to be done. It looks to the true intent and meaning, rather than to the form. It relieves of consequences of accident and mistake as well as fraud. *Ib.*

3. *Functions of court.*

A court of equity ought to do justice completely and not by halves. *Ib.*

4. *Intent of parties; meaning of term "ground rents" as used in conveyance; ascertainment and application.*

While a term, such as "ground rents," used in a conveyance may not be the recognized equivalent of any legal estate in lands, the court may ascertain the recognized meaning given to it and resort to that as evidence of the intent of the parties using it and thus determine what effect ought in equity to be given to it. *Ib.*

5. *Multiplicity of suits; prevention of; determination of purely legal rights.*

As a court of equity should prevent multiplicity of suits, it may, to this end, if obliged to take cognizance of a suit for any purpose retain it for all purposes even though required to determine purely legal rights otherwise beyond its authority. *Ib.*

6. *Jurisdiction to enjoin collection of tax.*

The fraud, accident or mistake necessary to justify an equitable action

to enjoin the collection of a tax must be more than mere illegality.  
*Singer Sewing Machine Co. v. Benedict*, 481.

See CERTIORARI, 5; JURISDICTION, D 3, 4, 5, 6, 7;  
 COURTS, 1; PRINCIPAL AND SURETY, 1;  
 ESTOPPEL; TRUSTS AND TRUSTEES.

### ESCROW.

1. *Liability of holder in dealing with one party without consent of other.*

One holding in escrow an agreement and money to be paid to one of two parties according to the terms of the agreement, acts at his peril in dealing with either party without the consent of the other; and if the party to whom he pays the amount deposited is not entitled thereto he is liable to the other party. *Citizens' National Bank v. Davisson*, 212.

2. *Liability of holder failing in duty to act impartially.*

In this case a bank acting as escrow-holder with notice of the contract, having by paying over to one party failed in its duty to act impartially, it is liable to the other party who was entitled to the money under the contract. *Ib.*

3. *Liability of holder for violation of agreement; effect of ignorance of facts.*

The fact that no officer of the bank has read an escrow agreement does not relieve the bank of responsibility for its action based on a separate memorandum made by one of its officers and which does not express the terms of the agreement. *Ib.*

4. *Act of agent of escrow-holder; effect on liability for act inconsistent with agreement.*

An endorsement on the outside of the envelope containing the escrow, made by an officer of the bank acting as escrow-holder, does not protect the bank if it is not in accordance with the escrow agreement itself. *Ib.*

### ESTATES IN LAND.

See EQUITY, 4;  
 REAL PROPERTY.

### ESTATE OF BANKRUPT.

See BANKRUPTCY, 1, 2, 4, 6, 10, 12, 20.



## STOPPEL.

*Equitable; application as between bank and broker selling stock stolen therefrom.*

A bank's trusted agent, in gross breach of his duty, took certain stock certificates belonging to the bank, endorsed and authenticated with evidence of title, to a broker who, in ordinary course of business and in good faith, sold them to third parties for full value and paid over the proceeds to such agent. *Held*, in a suit by the bank against the broker that:

Where one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.

Under the principles of equitable estoppel, the bank is estopped to make any claim against the broker. *National Safe Deposit Co. v. Hibbs*, 391.

*See* NOTICE.

## EVIDENCE.

<i>See</i> ANTI-TRUST ACT, 3;	EQUITY, 4;
CONTRACTS, 6;	EXTRADITION, 7, 8, 9, 10;
CONVEYANCES, 2, 3;	HOURS OF SERVICE LAW, 2, 3.
EMINENT DOMAIN, 10;	LOCAL LAW (Colo.).

## EXCEPTIONS.

*See* INSTRUCTIONS TO JURY, 2, 3.

## EXECUTIVE OFFICERS.

*See* CERTIORARI, 4, 5;  
COURTS, 4.

## EXECUTIVE ORDERS.

*See* PHILIPPINE ISLANDS, 2-6.

## EXEMPTIONS.

<i>See</i> BANKRUPTCY, 6, 7, 8;	CONSTITUTIONAL LAW, 14, 17;
CLAIMS AGAINST THE UNITED STATES;	EXTRADITION, 1;
	TAXES AND TAXATION, 1.

## EX POST FACTO LAWS.

*See* CONSTITUTIONAL LAW, 15.

## EXPRESS COMPANIES.

*See* INTERSTATE COMMERCE, 2.

## EXTRADITION.

1. *Exemption of citizens where treaty silent as to; policy of United States.*

The word "persons" etymologically considered includes citizens as well as those who are not; and while it is the practice of a preponderant number of nations to refuse to deliver its own citizens under a treaty of extradition silent on the point specifically, *held*, in view of the diplomatic history of the United States, there is no principle of international law by which citizens are excepted from the operation of a treaty to surrender persons where no such exception is made in the treaty itself. The United States has always so construed its treaties. *Charlton v. Kelly*, 447.

2. *Italy; supplemental treaty of 1884 construed; necessity for proof of formal demand.*

Construing the supplementary treaty of extradition with Italy of 1884 in the light of the original treaty of 1882 and of § 5270, Rev. Stat., it is not obligatory thereunder that the formal demand should be proven in preliminary proceedings within forty days after the arrest. *Ib.*

3. *Violation of treaty; effect to render void.*

While a violation of the extradition treaties with Italy of 1882 and 1884 by that power might render the treaty denounceable by the United States, it does not render it void and of no effect; and so *held* that the refusal of Italy to surrender its nationals has not had the effect of abrogating the treaty but of merely placing the Government in the position of having the right to denounce it. *Ib.*

4. *Violation of treaty as to delivery of citizens; waiver by Executive; duty of courts.*

Where, as in this case, the Executive has elected to waive any right to free itself from the obligation to deliver its own citizens under an existing extradition treaty, it is the duty of the court to recognize the obligation to surrender a citizen thereunder as one imposed by the treaty as the supreme law of the land. *Ib.*

5. *Proceeding for; nature of; issues involved.*

The proceeding in extradition before the examining magistrate is not a trial, and the issue is not the actual guilt, but whether there is a *prima facie* case sufficient to hold the accused for trial. *Ib.*

6. *Proceeding for; regularity of.*

In this case it appears that every requirement of the law whether treaty or statute was substantially complied with. *Ib.*

7. *Evidence; right of accused to produce.*

The accused in an extradition proceeding has not the right to introduce evidence simply because it would be admissible on the trial on plea of not guilty, nor is this right given by § 3 of the act of August 3, 1882. *Ib.*

8. *Evidence; effect of § 3 of act of August 3, 1882.*

Section 3 of the act of August 3, 1882, does not make evidence relevant, legal or competent which would not theretofore have been competent on a proceeding in extradition. *Ib.*

9. *Evidence; uniformity of rule as to.*

There is not, nor can there be, a uniform rule as to admission of evidence for the accused in an extradition proceeding. *Ib.*

10. *Evidence of insanity; right of magistrate to exclude.*

An examining magistrate may exclude evidence as to insanity of the accused; such evidence is in the nature of defense and should be heard at the trial or on preliminary examination in the jurisdiction of the crime. *Ib.*

11. *Review of decision of committing magistrate; availability of habeas corpus.*

The rule that a writ of *habeas corpus* cannot be used as a writ of error applies to extradition proceedings; and if the committing magistrate had jurisdiction and there was competent evidence as to commission of the crime his decision may not be reviewed on *habeas corpus*. *Ib.*

## FACTS.

See PRACTICE AND PROCEDURE, 3, 5, 6;  
REMOVAL OF CAUSES, 3.

## FEDERAL QUESTION.

See APPEAL AND ERROR, 1;  
JURISDICTION.

## FELLOW-SERVANTS.

See MASTER AND SERVANT, 2;  
NEGLIGENCE, 4.

## FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 16;  
EMINENT DOMAIN, 1-5.

## FINDINGS OF FACT.

*See* PRACTICE AND PROCEDURE, 3, 5, 6.

## FIRST AMENDMENT.

*See* CONSTITUTIONAL LAW, 16.

## FOREIGN COMMERCE.

*See* COMMERCE, 2, 3.

## FOURTEENTH AMENDMENT.

*See* CONSTITUTIONAL LAW;  
JURISDICTION, A 7.

## FRANCHISES.

*See* CONSTITUTIONAL LAW, 2, 3;  
GRANTS;  
MUNICIPAL CORPORATIONS, 2, 3, 4.

## FRAUD.

*See* REMOVAL OF CAUSES, 4.

## FREEDOM OF THE PRESS.

*See* CONSTITUTIONAL LAW, 16;  
MAILS, 3.

## FULL FAITH AND CREDIT.

*See* CONSTITUTIONAL LAW, 17, 18.

## GARNISHMENT.

*See* CONSTITUTIONAL LAW, 17.

## GOVERNMENTAL AGENCIES.

*See* CLAIMS AGAINST THE UNITED STATES.

## GOVERNMENTAL POWERS.

*Legislative and judicial powers defined.*

It is the province of the legislature to make the laws and of the court to enforce them. *Barrett v. Indiana*, 26.

*See* INTERNATIONAL LAW, 1, 2; PHILIPPINE ISLANDS;  
NAVIGABLE WATERS; TREATIES, 2.

## GOVERNMENT CONTRACTS.

*See* CONTRACTS, 3, 4, 5.

GRAND JURY.

*See* CONSTITUTIONAL LAW, 8.

GRANTOR AND GRANTEE.

*See* CONVEYANCES, 1;

GRANTS.

GRANTS.

*Franchises; strict construction against grantee.*

Franchises granting rights of the public must be in plain language, certain and definite in terms and containing no ambiguities. They are to be strictly construed against the grantee. (*Cleveland Electric Ry. Co. v. Cleveland*, 204 U. S. 116.) *Detroit United Railway v. Detroit*, 39.

*See* CONGRESS, POWERS OF, 3;

PRACTICE AND PROCEDURE, 9;

MUNICIPAL CORPORATIONS, 3, 4;

PUBLIC LANDS.

GROUND RENTS.

*See* EQUITY, 4;

REAL PROPERTY, 2.

GUARDIAN AND WARD.

*See* INDIANS, 3.

HABEAS CORPUS.

*See* EXTRADITION, 11.

HOMESTEADS.

*See* INDIANS, 2, 7.

HOURS OF SERVICE LAW.

1. *Liability of carriers under; relation as insurers of safety of employés.*

It was not the intent of Congress in enacting the Hours of Service Act of 1907 to subject carriers to the extreme liability of insurers of the safety of their employés by rendering them liable for all accidents occurring during the period of over-time whether attributable to the fact of working over-time or not. *St. Louis, I. M. & S. Ry. Co. v. McWhirter*, 265.

2. *Liability of carriers; necessity of proof of connection between over-time work and accident.*

In order to render the carrier liable under the Hours of Service Act.

there must be proof tending to show connection between permitting the over-time work and the happening of the accident. *Ib.*

3. *Liability of carriers; sufficiency of evidence of connection of over-time work and accident.*

In this case the evidence does not reasonably tend to connect the working over-time with the accident which occurred about seven minutes after the expiration of the permitted period. *Ib.*

### IMPAIRMENT OF CONTRACT OBLIGATION.

*See* CONSTITUTIONAL LAW, 2, 3.

### IMPORTS.

*See* PHILIPPINE ISLANDS, 2-6.

### INDIAN COUNTRY.

*See* INDIANS, 3.

### INDIANS.

1. *Binding effect of act of Congress and agreement with.*

Indians, no less than the United States, are bound by the plain import of the language of an act of Congress and an agreement conferring substantial benefits on them. *United States v. Mille Lac Chippewa Indians*, 498.

2. *Contracts with; reference to preëmption and homestead entries; what embraced.*

In a contract with Indians, such as that embodied in the act of January 14, 1889, a reference to regular and valid preëmption and homestead entries of land within a reservation would include all that were not fraudulent and would not exclude all entries on the ground of invalidity because made on lands within an Indian reservation. *Ib.*

3. *Intoxicating liquors; maintenance of statutory prohibition after incorporation of Indian country into State.*

In determining the effect of statutes regarding the introduction of liquor into Indian country, within the territorial limits of Oklahoma, every consideration arising out of the guardianship of the Federal Government over the Indians and control of their land indicate that as to them the liquor prohibition should be maintained after Statehood so far as consistent with the control of the State over its internal police. *United States v. Wright*, 226.

4. *Intoxicating liquors; responsibility of Government as to.*

The liquor prohibition, so far as it concerns Indians, has always been deemed one of the peculiar responsibilities of the Federal Government. *Ib.*

5. *Intoxicating liquors; prohibitory statutes; effect on, of Oklahoma Enabling Act.*

The provisions of § 2139, Rev. Stat., as amended by the acts of July 23, 1892, and January 30, 1897, so far as they related to the introduction of liquor into the Indian Territory from points outside of that Territory, but within what is now Oklahoma, have not been repealed, either expressly or by implication, by the Oklahoma Enabling Act. *Ib.*

6. *Mille Lac Chippewas; act of January 14, 1889; construction of.*

When Congress passed the act of January 14, 1889, adjusting relations with the Mille Lac Chippewas a real controversy was subsisting which was thereby adjusted and composed, and the act is to be construed according to its plain and unambiguous terms. *United States v. Mille Lac Chippewa Indians*, 498.

7. *Mille Lac Chippewas; Red Lake Reservation; liability of United States.*

Under the act of January 14, 1889, the Mille Lac Chippewas received substantial benefits in consideration whereof they released their claims to lands in the Red Lake Reservation upon which there were valid preëmption and homestead entries, and the United States is not bound to account to them for the proceeds of sale of such lands; but, as to the other lands, the United States held them in trust for the Mille Lac Chippewas who are entitled to damages under the act on the basis of the value of such lands in 1889. *Ib.*

## INDIAN TERRITORY.

*See* INDIANS, 5.

## INDICTMENT AND INFORMATION.

*See* ANTI-TRUST ACT, 2, 3, 4;

INTERSTATE COMMERCE, 3;

JURISDICTION, A 12.

## INJUNCTION.

*To restrain Postmaster General pending appeal.*

A restraining order against the Postmaster General enforcing the statute, the constitutionality of which is involved in this action (see

*ante*, p. 288) granted pending the decision on application of the appellant. *Journal of Commerce v. Burleson*, 600.

See APPEAL AND ERROR, 3;

EQUITY, 1, 6;

PRACTICE AND PROCEDURE, 11.

### INSANITY.

See EXTRADITION, 10.

### INSTRUCTIONS TO JURY.

1. *As to assumption of risk; when properly refused.*

It is not error to refuse an instruction as to assumption of risk which is couched in such sweeping terms that it could not enlighten the jury as to the particular phase of the case to which it is deemed applicable. *Norfolk & Western Ry. Co. v. Earnest*, 114.

2. *Objections to; duty of counsel.*

Fairness to the court requires one objecting to a particular part of the charge as misleading to call special attention to the words in order that the court may either modify or explain them. *Ib.*

3. *Objections; sufficiency of general exception.*

Where an instruction embodies several propositions of law to some of which no objection can properly be taken, a general exception does not entitle the exceptor to take advantage of a mistake or error in some single or minor proposition of law. *Ib.*

See ANTI-TRUST ACT, 3;

EMPLOYERS' LIABILITY ACT, 2.

### INSTRUMENTALITIES OF COMMERCE.

See EMPLOYERS' LIABILITY ACT, 5, 6;

INTERSTATE COMMERCE.

### INTEREST.

See CLAIMS AGAINST THE UNITED STATES.

### INTERNATIONAL LAW.

1. *Conquered territory; governmental powers over; taxation.*

The local government of a conquered country being destroyed, the conqueror may set up its own authority and make rules and regulations for the conduct of temporary government, and to that end may collect taxes and duties to support the military authority and carry on operations incident to the occupation. *MacLeod v. United States*, 416.



2. *Conquered territory; governmental powers over; essentials to exercise.*

An occupation giving the right to the conqueror to exercise governmental authority must be not only invasion but also possession of the enemy's country. *Ib.*

3. *State of war; continuance of.*

A state of war, as to third persons, continued during and after the war with Spain until the ratification of the treaty of peace. *Ib.*

*See* EXTRADITION;

PHILIPPINE ISLANDS, 3;

STATUTES, A 10.

### INTERSTATE COMMERCE.

1. *What constitutes; breaking up trains as part of.*

Interstate transportation is not ended by the arrival of the train at the terminal. The breaking up of the train and moving the cars to the appropriate tracks for making up new trains for further destination or for unloading is as much a part of interstate transportation as the movement across the state line. *St. Louis, S. F. & T. Ry. Co. v. Seale*, 156.

2. *Carriers within Act to Regulate; joint stock companies as; express companies.*

Under § 10 of the Act to Regulate Commerce, as amended by the act of June 29, 1906, c. 3591, 34 Stat. 584, express companies are included in the term common carrier and made amenable to the act. Congress at that time had knowledge of the fact that some of the great express companies were organized as joint stock associations and the amendment was intended to bring such associations under the act. *United States v. Adams Express Co.*, 381.

3. *Carriers within act; joint stock associations as.*

A joint stock association is amenable to the provisions of the Act to Regulate Commerce and is subject to indictment for violations thereof. *Ib.*

*See* COMMERCE, 2, 3;

EMPLOYERS' LIABILITY ACT;

HOURS OF SERVICE LAW.

### INTOXICATING LIQUORS.

*See* INDIANS, 3, 4, 5.

### INVENTION.

*See* PATENTS.

## INDEX.

## IRRIGATION.

*See* RECLAMATION OF ARID LANDS.

## ITALY.

*See* EXTRADITION, 2, 3.

## JOINDER OF PARTIES.

*See* REMOVAL OF CAUSES, 4, 5, 6, 7.

## JOINT STOCK ASSOCIATIONS.

*See* CONGRESS, POWERS OF, 1;  
INTERSTATE COMMERCE, 2, 3.

## JOINT TORT-FEASORS.

*See* REMOVAL OF CAUSES, 5.

## JUDGMENTS AND DECREES.

<i>See</i> APPEAL AND ERROR, 2, 3;	COURTS, 3;
CONGRESS, POWERS OF, 2;	JURISDICTION, A 12;
CONSTITUTIONAL LAW, 17;	RES JUDICATA.

## JUDICIAL DISCRETION.

*See* EMINENT DOMAIN, 10;  
PRACTICE AND PROCEDURE, 1.

## JUDICIAL SALES.

*See* BANKRUPTCY, 9, 15, 16;  
REAL PROPERTY, 1.

## JUDICIARY.

<i>See</i> APPEAL AND ERROR;	GOVERNMENTAL POWERS;
COURTS;	JURISDICTION.

## JURISDICTION.

## A. OF THIS COURT.

1. *Under § 709, Rev. Stat.; sufficiency of Federal question raised; assertion of right under Federal statute.*

Even if a demurrer in an action in the United States Court of Indian Territory, on the ground that the action should be at law instead of in equity, does amount to an assertion of right under § 723, Rev. Stat., that section is so plainly inapplicable to the practice in such court that no substantial Federal question is raised that would war-

rant this court in reviewing, under § 709, Rev. Stat., the judgment of the state court to which the case was transferred on Statehood. *Dill v. Ebey*, 199.

2. *Under § 709, Rev. Stat.; sufficiency of Federal question raised; setting up right under trial by jury provision of Constitution.*

Demurrer in the territorial court, on the ground that the action should be at law and not in equity, is not such a demand for a jury trial as to amount to specially setting up a right under the trial by jury provision of the Federal Constitution. *Ib.*

3. *Under § 709, Rev. Stat.; action transferred from territorial court on Statehood; time for raising Federal question.*

In order to entitle plaintiff in error to have this court review a judgment of the state court in an action transferred to that court from the territorial court after Statehood, the Federal question should be specially set up in the state court at the proper time; he cannot rely on a premature assertion of the right in the territorial court. *Ib.*

4. *Under § 709, Rev. Stat.; effect of fact that case might have been decided from non-Federal point of view.*

Where the case was decided on the Federal question, the fact that it might have been decided from a non-Federal point of view does not afford a basis for holding that it was decided on the latter ground and that this court has no jurisdiction under § 709, Rev. Stat. *St. Louis, I. M. & S. Ry. Co. v. McWhirter*, 265.

5. *Under § 709, Rev. Stat.; involution of Federal question.*

While the power of this court to review the judgment of a state court is controlled by § 709, Rev. Stat., § 237, Judicial Code, yet where in a controversy of a purely Federal character the claim is made and denied that there was no evidence tending to show liability under the Federal statute, such ruling, when duly excepted to, is reviewable, because inherently involving the operation and effect of the Federal law. *Ib.*

6. *To review judgment of state court resting on non-Federal grounds sufficient to sustain it.*

This court will not review the judgment of the state court when it rests not only on Federal, but also on non-Federal grounds, and the latter are sufficient to sustain it and were necessarily decided. *Adams v. Russell*, 353.

7. *To review judgment of state court resting on non-Federal ground sufficient to sustain it.*

The state court having held that, under the applicable statutes, the parole granted to a prisoner was absolutely void and was therefore properly vacated, such ground is sufficient to sustain the judgment, and this court cannot review it on the asserted Federal question that the state officers had vacated the parole in such manner as to violate the prisoner's constitutional rights secured by the Fourteenth Amendment. *Ib.*

8. *To review judgment of state court in condemnation proceeding; involution of constitutional question.*

A judgment by which an owner of condemned property gets less than he ought, and in that sense is deprived of his property, cannot come to this court on the constitutional question unless there is something more than an ordinary honest mistake of law in the proceedings. (*Backus v. Fort Street Depot*, 169 U. S. 557.) *McGovern v. New York*, 363.

9. *To review judgments of territorial supreme court; scope of, under § 2, act of 1874.*

Under the act of April 7, 1874, c. 80, § 2, the review by this court of judgments of the Supreme Court of a Territory is confined to determining whether the facts found by the court below sustain the judgment. *Citizens' National Bank v. Davisson*, 212.

10. *To review, on certiorari, decisions of Circuit Courts of Appeals.*

The exceptional power of this court to review, upon certiorari, decisions of the Circuit Court of Appeals on an appeal from an interlocutory order is intended to be, and is, sparingly exercised; that power does exist, however, in a case where no appeal lies from the final decision of that court. *Denver v. New York Trust Co.*, 123.

11. *To review, on certiorari, decisions of Circuit Courts of Appeals; when judgment of Circuit Court of Appeals final.*

A suit to enforce a contract between a municipality and a water company for the purchase, as is claimed, by the former of the water plant of the latter and to enjoin the city from constructing another plant, is not without more a case arising under the Constitution of the United States. In such a case the decision of the Circuit Court of Appeals is final and the writ of certiorari may be exercised. *Ib.*

12. *Under Criminal Appeals Act; effect of granting motion to quash service of process.*

The decision of the court below, granting a motion to quash the service

on the ground that the statute on which the indictment is based does not include the defendant, is equivalent to a decision sustaining a demurrer to the indictment and is based upon the construction of the statute, and this court has jurisdiction under the Criminal Appeals Act of March 2, 1907. *United States v. Adams Express Co.*, 381.

See APPEAL AND ERROR.

B. OF CIRCUIT COURTS OF APPEALS.

See APPEAL AND ERROR, 1;

JURISDICTION, A 11.

C. OF CIRCUIT COURTS.

*On removal from state court.*

Where the defects in service of process and in procedure in the state court are waivable, and after removal there is presented to the Circuit Court a controversy involving more than \$2,000 and between citizens of different States, that court has jurisdiction and the method of getting the case before the court cannot operate to deprive it of jurisdiction. *Mackay v. Vinta Co.*, 173.

See APPEAL AND ERROR, 1;

ATTACHMENT.

D. OF FEDERAL COURTS GENERALLY.

1. *Motives in seeking; materiality of.*

The motives of litigants in seeking Federal jurisdiction are immaterial. (*Blair v. Chicago*, 201 U. S. 401.) *Wheeler v. Denver*, 342.

2. *Collusion; effect on jurisdiction of indemnifying plaintiff in taxpayer's suit against liability for costs and fees.*

The fact that the plaintiff in a taxpayer's suit against a municipality was solicited to bring the suit and was indemnified against liability for costs and fees is not enough in itself in the absence of any illegal purpose to make the case collusive so as to deprive the court of jurisdiction. *Cashman v. Amador Canal Co.*, 118 U. S. 58, distinguished. *Ib.*

3. *Equity, under § 723, Rev. Stat.*

Under § 723, Rev. Stat., a bill of equity does not lie in the courts of the United States where a plain, adequate and complete remedy can be had at law. *Singer Sewing Machine Co. v. Benedict*, 481.

4. *Equity; duty of court where remedy at law obvious.*

Where it is obvious that there is a remedy at law, it is the duty of the court to interpose that objection *sua sponte* to a suit in equity. *Ib.*

5. *Equity; objection to; availability in appellate court.*

Where, as in this case, there has been no waiver on the part of the defendant, the objection is available in the appellate court. *Ib.*

6. *Equity; ground for.*

The illegality or unconstitutionality of a state or municipal tax is not itself a ground for equitable relief in the Federal courts. (*Boise Water Co. v. Boise City*, 213 U. S. 276.) *Ib.*

7. *Equity; of suit maintainable in state court.*

The state courts cannot define the equity jurisdiction of the Federal courts; but where the state courts have held that a suit in equity could be maintained in the courts of the State, the same suit can be maintained in the Federal court having jurisdiction in other respects. *Ib.*

*See* COURTS, 1.

## E. OF BANKRUPTCY COURT.

*See* BANKRUPTCY, 9.

## F. EQUITY.

*See* EQUITY.

## G. GENERALLY,

*See* COMMERCE, 1, 3.

## LAND GRANTS.

*See* PUBLIC LANDS

## LEASE.

*See* REAL PROPERTY, 2.

## LEGACIES.

*See* TRUSTS AND TRUSTEES, 2, 3;  
WILLS.

## LEGISLATIVE POWER.

*See* CONGRESS, POWERS OF;      GOVERNMENTAL POWERS;  
CONSTITUTIONAL LAW, 4, 9, 10;      TAXES AND TAXATION.

## LIENS.

*See* BANKRUPTCY, 8.

## LIQUORS.

See INDIANS, 3, 4, 5.

## LOCAL LAW.

*Colorado.* Remedy for recovery of illegal tax. In Colorado one paying an illegal tax has a remedy at law to recover it back, and the fact that the tax list is *prima facie* evidence of the amount due does not make it conclusive. *Singer Sewing Machine Co. v. Benedict*, 481.

*Indiana.* Entries in coal mines (see Constitutional Law, 5). *Barrett v. Indiana*, 26.

*Michigan.* Riparian rights (see Navigable Waters, 12). *United States v. Chandler-Dunbar Co.*, 53.

Taxation of telephone companies (see Constitutional Law, 14). *Citizens Telephone Co. v. Fuller*, 322.

*Oregon.* Information law of 1899 (see Constitutional Law, 8). *Lem Woon v. Oregon*, 586.

Prosecutions; amendment to constitution affecting (see Constitutional Law, 15). *Ib.*

*Generally.* See COURTS, 6, 7;

NAVIGABLE WATERS, 11;

PRACTICE AND PROCEDURE, 2.

## MCKINLEY LAW.

See CRIMINAL LAW.

## MAILS.

1. *Classification; power of Congress as to.*

From the beginning Congress, in exerting its power under the Constitution to establish post-offices, has acted upon the assumption that it is not bound by any hard and fast rule of uniformity, and has always assumed the right to classify in its broadest sense. *Lewis Publishing Co. v. Morgan*, 288.

2. *Classification; special privileges; power of Congress as to.*

Congress always has given, and subject only to the express limitations of the Constitution, can give, special mail advantages to favor the circulation of newspapers, and has also fixed the general standard and imposed conditions upon which these privileges can be obtained. *Ib.*

3. *Publications; conditions of carriage; effect of § 2 of Post Office Appropriation Act of 1912.*

The provisions in § 2 of the Post Office Appropriation Act of 1912 regarding publications and conditions under which they can be carried in the mail construed and *held*, that those provisions are intended simply to supplement existing legislation relative to second class mail matter, and not as an exertion of legislative power to regulate the press, curtail its freedom or to deprive one not complying therewith of all right to use the mail service. *Ib.*

4. *Penalty for non-compliance with requirements as to second-class matter; privileges denied.*

A penalty of denial of the privileges of the mail for failure to comply with requirements applicable only to second class matter does not amount to entire exclusion from use of the mail. *Ib.*

5. *Penalty for non-compliance with requirements as to second-class matter; effect as regulation of publications concerned.*

Requirements in regard to publications entitled to be entered as second class mail and sanctioned by the penalty of exclusion from the privileges of such second class, are not to be construed as independent regulation of such publications, but only as condition precedent to retaining the privileges of second class mail after entry of the publication; and so *held* as to the provision that paid for matter in periodicals must be marked "advertisement" under penalty of exclusion from the privileges of the mail. *Ib.*

6. *Appropriation acts; reference of provision in.*

A provision in a post-office appropriation act referring to the entering of mail matter refers to second class mail as that is the only class to which the word "enter" can apply. *Ib.*

*See CONSTITUTIONAL LAW, 16.*

## MASTER AND SERVANT.

1. *Liability of master for negligence of servant; quære as to.*

*Quære*, whether liability to a third person against the master may result from the servant's neglect of some duty owing to the employer alone. *Chicago, R. I. & P. Ry. Co. v. Dowell*, 102.

2. *Servant's individual liability for negligence; misfeasance.*

Positive acts of negligence on the part of an engineer while engaged in his employer's business toward a fellow-servant, are acts of misfeasance for which he is primarily liable notwithstanding his con-



tract with his employer and the liability of the latter under the state statute. *Ib.*

*See* EMPLOYERS' LIABILITY ACT, 3;  
HOURS OF SERVICE LAW;  
INSTRUCTIONS TO JURY, 1.

MESSAGES AND PAPERS OF THE PRESIDENTS

*See* COURTS, 5.

MILITARY OCCUPATION.

*See* PHILIPPINE ISLANDS;  
STATUTES, A 10.

MILLE LAC CHIPPEWAS.

*See* INDIANS, 6, 7.

MINES AND MINING.

*See* CONSTITUTIONAL LAW, 5, 10;  
POLICE POWER.

MISTAKE.

*See* REAL PROPERTY, 1.

MONOPOLY.

*See* PATENTS, 5, 6, 7.

MORTGAGES AND DEEDS OF TRUST.

*See* RECORDATION OF INSTRUMENTS, 2.

MULTIPLICITY OF SUITS.

*See* EQUITY, 5.

MUNICIPAL CORPORATIONS.

1. *Charter; amendment; validity of; city of Denver; municipal ownership.*  
A provision in regard to the acquisition of a municipal water plant held in this case not to be a revision *in extenso* of the city charter but only an amendment thereto; and also held that none of the objections to the adoption of the amendment to the charter of the city of Denver providing for erection of a municipal water plant are tenable. *Denver v. New York Trust Co.*, 123.
2. *Franchises; public utility; construction of Denver ordinances relating to water company.*  
The various ordinances of the City of Denver, Colorado, granting and

relating to the franchise to the Denver Union Water Company considered and construed; and *held* that they did not require the city at the expiration of twenty years to exercise either the option to renew or the option to purchase reserved in the franchise ordinance, nor did they preclude the city from erecting its own plant. *Ib.*

3. *Franchises; term of; limitation by city charter.*

Where a municipal ordinance grants a franchise to such extent as the city may lawfully grant it, the term is not in doubt, if the city charter expressly limits the term of all such grants. *Ib.*

4. *Franchises; provision of city charter as part of ordinance granting.*

A limitation in the charter on grants by the municipality is as much part of an ordinance subsequently passed as though written into it. *Ib.*

5. *Public utilities; effect of ordinance relative to, as election to purchase existing plant.*

An ordinance providing for appraisal of a water plant and for submitting to the electors whether the contract shall be extended or the plant purchased at the appraised value, does not amount to an election to purchase the plant. *Ib.*

See APPEAL AND ERROR, 3;

CONSTITUTIONAL LAW, 3, 6, 12.

## MUNICIPAL ORDINANCES.

See CONSTITUTIONAL LAW, 2, 3.

## NAVIGABLE WATERS.

1. *Dominant right of public in; use of bed.*

The public right of navigation is the dominant right in navigable waters and this includes the right to use the bed of the water for every purpose which is an aid to navigation. *Lewis Blue Point Oyster Co. v. Briggs*, 82.

2. *Power of Congress over; delegation of power by States.*

Whatever power the several States had before the Union was formed over navigable waters within their respective jurisdictions has been delegated to Congress, which now has all governmental power over the subject, restricted only by the limitations in the other clauses of the Constitution. *Ib.*

3. *Power of Congress over.*

Under the Constitution, Congress can adopt any means for the im-

provement of navigation that are not prohibited by that instrument itself. *United States v. Chandler-Dunbar Co.*, 53.

4. *Flow of; property right in.*

The flow of the stream of a navigable river is in no sense private property, and there is no room for judicial review, at the instance of a private owner of the banks of the stream, of a determination of Congress that such flow is needed for the improvement of navigation. *Ib.*

5. *Flow of; ownership in.*

Private ownership of running water in a great navigable stream is inconceivable. *Ib.*

6. *Flow; use of; removal of structures necessary for; effect of act of March 3, 1909, relative to St. Marys River.*

The act of Congress of March 3, 1909, declaring that a public necessity existed for absolute control of all the water of St. Marys River excludes forever all structures necessary for commercial use of the water power, regardless of whether there may be any surplus in the flow beyond that required for purposes of navigation. *Ib.*

7. *Flow of; when taking for purposes of navigation; effect of sale of surplus power.*

Even if the act declaring that the entire flow of a navigable stream is necessary for navigation provides for the sale of surplus power, the act is still a taking for the purposes of navigation and not for a commercial use. *Ib.*

8. *Flow; taking by Government; sale of surplus unobjectionable.*

If the primary object is a legitimate taking there is no objection to the usual disposition of what may be a possible surplus of power. (*Kaukauna Co. v. Green Bay Canal*, 142 U. S. 254.) *Ib.*

9. *Flow; taking for purposes of navigation; sale of surplus; who may not object to.*

An objection to selling excess water power resulting from construction of works for the improvement of navigation cannot be made by one who has no property right in the water which has been taken. *Ib.*

10. *Beds of; title to.*

*United States v. Chandler-Dunbar Co.*, *ante*, p. 53, followed as to the nature of the title of an owner of the bed of navigable waters and

the control of Congress thereover. *Monongahela Navigation Co. v. United States*, 148 U. S. 312, distinguished as not resting on proprietary rights but on estoppel. *Lewis Blue Point Oyster Co. v. Briggs*, 82.

11. *Beds of; title to; law governing.*

The technical title to the beds of navigable rivers of the United States is either in the States in which the rivers are situated, or in the riparian owners, depending upon the local law. *United States v. Chandler-Dunbar Co.*, 53.

12. *Title of riparian owner in Michigan.*

Upon the admission of Michigan as a State into the Union the bed of the St. Marys River passed to the State; under the law of Michigan a conveyance of land bordering upon a navigable river carries the title to the middle thread. *Ib.*

13. *Title of riparian owner; subordination to right of navigation.*

The title of the riparian owner to the bed of a navigable stream is a qualified one, and subordinate to the public right of navigation and subject to the absolute power of Congress over the improvement of navigable rivers. *Ib.*

14. *Obstructions in; conclusiveness of judgment of Congress as to what constitutes.*

The judgment of Congress as to whether a construction in or over a navigable river is or is not an obstruction to navigation is an exercise of legislative power and wholly within its control and beyond judicial review; and so *held* as to the determination of Congress that the whole flow of St. Marys River be directed exclusively to the improvement thereof by the erection of new locks therein. *Ib.*

15. *Obstructions in; right of one acting under revocable permit; effect of act of Congress revoking permit.*

One placing obstructions in a navigable stream under a revocable permit of the Secretary of War does not acquire any right to maintain the same longer than the Government continues the license; and an act of Congress revoking the permit does not amount to a taking of private property so far as exclusion from what was covered by the permit is concerned. *Ib.*

16. *Obstructions in; removal; power of Congress; effect of loss to owners.*

Every structure in the water of a navigable river is subordinate to the right of navigation and must be removed, even if the owners sus-

tain a loss thereby, if Congress, in assertion of its power over navigation, so determines. *Ib.*

See CONGRESS, POWERS OF, 2, 3; PRACTICE AND PROCEDURE, 9;  
EMINENT DOMAIN, 1, 2, 4; RES JUDICATA.

### NAVIGATION.

See CONSTITUTIONAL LAW, 1; EMINENT DOMAIN, 1, 2, 4;  
CONGRESS, POWERS OF, 2, 3; NAVIGABLE WATERS.

### NAVY.

See ARMY AND NAVY.

### NEGLIGENCE.

#### 1. *Emergency judgment; accountability for.*

One obliged to form a judgment in an emergency on the spot is not to be held accountable in the same measure as one able to judge the situation in cold abstraction. (*The Germanic*, 196 U. S. 589.)  
*Chicago, R. I. & P. Ry. Co. v. Brown*. 317.

#### 2. *Contributory; movement of trains; failure to anticipate possibility of injury.*

The movement of trains requires prompt action, and one engaged therein should not be held guilty of contributory negligence because he did not anticipate that he might be injured if he selected one of several ways of performing his duty even though he had knowledge of the existence of that which caused his injury. *Ib.*

#### 3. *Contributory; direction of verdict; damages on affirmance.*

There being evidence to sustain the verdict that plaintiff was not guilty of contributory negligence, the court below properly denied a motion to direct a verdict for the defendant, and this court affirms the judgment with ten per cent. damages. *Texas & Pacific Ry. Co. v. Prater*, 177.

#### 4. *Fellow-servants; duty to each other; function of jury.*

The truth of evidence tending to show a custom as to where switchmen walk in a railroad yard, is for the jury to determine; and if true it is the duty of an engineer, in the exercise of ordinary care to watch for a switchman whom he knows is in the usual locality and in front of his engine. *Norfolk & Western Ry. Co. v. Earnest*, 114.

See EMPLOYERS' LIABILITY ACT, 2, 3; REMOVAL OF CAUSES, 6, 7;  
MASTER AND SERVANT, 1, 2; SAFETY APPLIANCE ACTS.

## NEGOTIABLE INSTRUMENTS.

*See* BANKS AND BANKING, 1;  
STOCK AND STOCKHOLDERS, 1.

## NEWSPAPERS.

*See* MAILS, 2, 3, 4, 5.

## NON COMPOS MENTIS.

*See* EXTRADITION, 10.

## NON OBSTANTE VEREDICTO.

*See* COURTS, 3.

## NOTICE.

*Estoppel to plead ignorance.*

One cannot plead ignorance of a fact of which he has notice as an excuse for violating rights of parties whom he is bound to protect. *Citizens National Bank v. Davisson*, 212.

*See* BANKS AND BANKING, 2, 3, 4;      INTERSTATE COMMERCE, 2;  
COURTS, 2;      NEGLIGENCE, 2;  
ESCROW, 2, 3, 4;      PATENTS, 6.

## OBJECTIONS.

*See* JURISDICTION, D 4, 5;  
INSTRUCTIONS TO JURY, 2, 3;  
NAVIGABLE WATERS, 9.

## OBSTRUCTIONS TO NAVIGATION.

*See* NAVIGABLE WATERS, 6, 14, 15, 16.

## OCCUPATION OF CONQUERED TERRITORY.

*See* INTERNATIONAL LAW, 1, 2;  
PHILIPPINE ISLANDS.

## OKLAHOMA.

*See* INDIANS, 3.

## OPIUM TRADE.

*See* CRIMINAL LAW, 1, 2.

## ORDINANCES.

*See* CONSTITUTIONAL LAW, 2, 3;  
MUNICIPAL CORPORATIONS.

## PAROLES.

*See* COURTS, 6;  
JURISDICTION, A 7.

## PARTIES.

*See* JURISDICTION, D 2;  
REMOVAL OF CAUSES, 4, 5, 6, 7.

## PATENTS.

1. *Statutory rights.*

The right to make, use and sell an invented article existed without, and before, the passage of the patent law; the act secured to the inventor the exclusive right to make, use and vend the thing patented. *Bauer v. O'Donnell*, 1.

2. *Construction of patent law.*

While the patent law should be fairly and liberally construed to effect the purpose of Congress to encourage useful invention, the rights and privileges which it bestows should not be extended by judicial construction beyond what Congress intended. *Ib.*

3. *Law of, and that of copyrights, differentiated.*

The patent law differs from the copyright law in that it not only confers the right to make and sell, but also the exclusive right to use the subject-matter of the patent. *Ib.*

4. *Phraseology of patent law not technical.*

In framing the patent act and defining the rights and privileges of patentees thereunder Congress did not use technical or occult phrases, but in simple terms gave the patentee the exclusive right to make, use and vend his invention for a definite term of years. *Ib.*

5. *Monopoly created by patent law; when article beyond limits of.*

While the patent law creates to a certain extent a monopoly by the inventor in the patented article, a patentee who has parted with the article patented by passing title to a purchaser has placed the article beyond the limits of the monopoly secured by the act. (*Adams v. Burke*, 17 Wall: 453.) *Ib.*

6. *Sales of patented articles; right of patentee to limit price.*

A patentee may not by notice limit the price at which future retail sales of the patented article may be made, such article being in the hands of a retailer by purchase from a jobber who has paid to the

agent of the patentee the full price asked for the article sold. *Henry v. Dick Co.*, 224 U. S. 1, distinguished. *Ib.*

7. *Use of invention; right to transfer article with qualified title as to use.*

The right given by the patent law to the inventor to use his invention should be protected by all means properly within the scope of the statute, and the patentee may transfer a patented article with a qualified title as to its use. (*Henry v. Dick Co.*, 224 U. S. 1.) *Ib.*

8. *Vending; effect of use of words "vend" and "vending" in §§ 4884, 4952, Rev. Stat.*

The words "vend" and "vending" as used in § 4952, Rev. Stat., in regard to the copyright protection accorded authors and as used in § 4884, Rev. Stat., in regard to the protection accorded inventors for their patented articles, are substantially the same, and the protection intended to be secured to authors and inventors is substantially identical. *Ib.*

9. *Vending; effect of word "vending" in patent law.*

While *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339, recognized that there are differences between the copyright statute and the patent statute, and disclaimed then deciding the effect of the word "vending" as used in the latter, this court now decides that the terms used in regard to the protection accorded by both statutes in regard to the exclusive right to sell are to all intents the same. *Ib.*

10. *Vending; effect of attempt to reserve right to fix price on resale.*

Where the transfer of the patented article is full and complete, an attempt to reserve the right to fix the price at which it shall be resold by the vendee is futile under the statute. It is not a license for qualified use, but an attempt to unduly extend the right to vend. *Henry v. Dick Co.*, 224 U. S. 1, distinguished. *Ib.*

## PENALTIES AND FORFEITURES.

*See* MAILS, 4, 5.

## PERIODICALS.

*See* MAILS.

## PHILIPPINE ISLANDS.

1. *Military occupancy of; limitation of extent.*

The military occupation by the United States, during and after the war with Spain, of the Philippine Islands, and the conduct of the military government thereof, did not extend to places which were



not in actual possession of the United States, until they were reduced to such possession. *MacLeod v. United States*, 416.

2. *Military occupation; collection of duties on imports; application of executive orders.*

Executive orders regarding the collection of duties on goods imported into the Philippine Islands during the military occupancy thereof by the United States did not apply to any ports, such as Cebu, during the time that they were not in the possession and under the control of the United States. *Ib.*

3. *Military occupation of; collection of duties on imports; application of executive orders.*

The principles of international law were recognized by the Executive in issuing orders concerning the government of the Philippine Islands during military occupancy thereof, and this court will not construe an order directing payment of duties on imports as relating to goods brought into ports in the possession of the *de facto* government of the insurgents. *Ib.*

4. *Military occupation of; duties on imports; executive order of July 12, 1898; effect of place of residence of importer.*

The fact that the importer of goods brought into a port of the Philippine Islands which had not been reduced to possession by the United States but was still under control of a *de facto* government of the insurgents resided in Manila which was under military occupancy did not make him subject to the executive order of July 12, 1898, to pay duties on such goods. *Ib.*

5. *Military occupancy; duties on imports; application of ratification of executive acts.*

The act of June 30, 1906, c. 3912, 34 Stat. 636, ratifying executive acts imposing duties, does not apply to duties collected at points which the United States had not occupied and which were in possession of insurgent *de facto* governments. *United States v. Heinszen*, 206 U. S. 370, distinguished. *Ib.*

6. *Military occupancy; duties on imports; legality of exaction.*

Duties collected by the United States on cargoes imported at ports in the Philippine Islands which had not been reduced to possession by the United States but were in possession of the *de facto* government of insurgents were an illegal and unwarranted exaction covered neither by the order of the President nor the ratifying acts of Congress. *Ib.*

## INDEX.

## PLEADING.

See CONVEYANCES, 2;  
PRACTICE AND PROCEDURE, 1.

## POLICE POWER.

*Businesses within; coal mining.*

Coal mining is a dangerous business and subject to police regulation by the State. *Barrett v. Indiana*, 26.

See CONSTITUTIONAL LAW, 5, 10, 11;  
INDIANS, 3.

## POSTAL LAWS.

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## POSTMASTER GENERAL.

See CERTIORARI, 5;  
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## POWERS OF CONGRESS.

See CONGRESS, POWERS OF;      MAILS, 1, 2;  
CONSTITUTIONAL LAW,      NAVIGABLE WATERS, 2, 3, 10, 13, 14,  
1;      15, 16.

## PRACTICE AND PROCEDURE.

1. *Amendment of pleading; interference with discretion of trial court.*

Even if the decision of a state court having jurisdiction of a case transferred from a Federal court were subject to review here on a non-Federal question, this court would not, in the absence of manifest error, interfere with the discretion of the trial judge in permitting or refusing an amendment. *First National Bank v. Keys*, 179.

2. *Application of local law as to form of local statute.*

Where there has been a constant legislative and executive construction of a provision of the constitution of the State in regard to the title of a statute clearly expressing the object thereof, this court will not, in view of the consequences of striking down legislation, declare a statute invalid on account of defective title where, as in this case, there has been substantial compliance with the requirements of the constitution of the State in that regard. *Citizens Telephone Co. v. Fuller*, 322.

3. *Certification of facts found by territorial supreme court.*

The facts found are certified to this court by the territorial Supreme

Court either by adopting the findings of the trial court or by making separate findings of its own. *Citizens National Bank v. Davisson*, 212.

4. *Deference to concurring judgments of lower courts.*

Where the trial court and the Circuit Court of Appeals have, after considering the evidence, confirmed the verdict, this court will hesitate to say that their concurring judgments are not such as could be reasonably formed or are without foundation as matter of law. *Chicago, R. I. & P. Ry. Co. v. Brown*, 317.

5. *Following state court's findings of fact.*

It is only in exceptional cases that this court does not accept the facts as found by the state Supreme Court; and where, as in this case, those facts are supported by competent testimony it will not retry issues of fact already properly heard and determined by courts of competent jurisdiction. *Portland Ry. Co. v. Oregon Railroad Commission*, 397, 414.

6. *Following state court's findings of fact.*

Where the record does not clearly disclose all facts necessary on which to base conclusions, this court will not overrule the state tribunal and declare rates fixed by it within its jurisdiction to be confiscatory and violative of rights secured by the Fourteenth Amendment. *Ib.*

7. *Following state court's construction of state statute.*

A construction by the state court that the equality provisions of a state statute regulating railway fares applies to localities as well as to individuals is binding upon this court, and the constitutionality of the statute will be determined as so construed. *Ib.*

8. *Following state court's ruling as to rights acquired under contract with State.*

This court follows the ruling of the state court on the question whether contracts between the purchaser and the State convey such an equitable title that the certificates of purchase are real estate. *Robertson v. Howard*, 254.

9. *Following state court's construction of state grants.*

The determination by the state court of the effect of grants of title to the bed of navigable waters within the State must be followed by this court. *Lewis Blue Point Oyster Co. v. Briggs*, 82.

10. *Scope of review of judgment of Circuit Court of Appeals.*

Where the case is within the class which it was the purpose of the Judiciary Act of 1891 to submit to the final jurisdiction of the Circuit Court of Appeals, this court goes no further than to inquire whether plain error is made out. (*Texas & Pacific Railway v. Howell*, 224 U. S. 577.) *Chicago, R. I. & P. Ry. Co. v. Brown*, 317.

11. *Scope of review of order of Circuit Court of Appeals granting injunction in equity case.*

On a review of an order of the Circuit Court of Appeals granting an injunction in an equity case, this court is not confined to considering the act of granting the injunction, but if it determines that there is any insuperable objection to maintaining the bill it may direct a final decree dismissing it. *Denver v. New York Trust Co.*, 123.

See INSTRUCTIONS TO JURY, 2;  
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## PREEMPTION ENTRIES.

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## PRESUMPTIONS.

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## PRINCIPAL AND AGENT.

See BANKS AND BANKING, 2, 3, 4;  
ESCROW, 4.

## PRINCIPAL AND SURETY.

1. *Alteration to discharge surety; consideration in determining.*

A court of equity looks to substance rather than to form. Whether the contract of the principal has been so altered as to discharge the surety is to be decided according to the essentials. *Wilkinson v. McKimmie*, 590.

2. *Alteration to discharge surety; what amounts to.*

In this case held that an arrangement as to a reservation in a conveyance made simply to save expense of reconveyance and which did not alter the position of the principal or his surety was not such a material change as would discharge the surety. *Ib.*

3. *Liability of surety for acts of principal not specified in bond.*

Sureties on the official bond of a public officer are not, in the absence of statutory provisions, responsible for his failure to account for moneys received and held by him extra-officially and not specified in the bond. *District of Columbia v. Petty*, 593.

PRIVATE LAND CLAIMS.

*See* PUBLIC LANDS.

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*See* STATUTES, A 6.

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*See* ATTACHMENT, 3.

PUBLICATIONS.

*See* MAILS.

PUBLIC LANDS.

1. *Spanish grants; proceedings on which grant issued.*

The proceedings on which the grant involved in this case was issued are substantially the same as those in *United States v. Sandoval*, 167 U. S. 278. *Bond v. Barela*, 488.

2. *Spanish grants; title of United States.*

Whether the original grant made in 1739 by royal authority of Spain was in severalty or communal, whatever was unallotted passed into the public domain of the United States upon the acquisition of the Territory. *Ib.*

3. *Spanish grants; confirmation by act of July 22, 1854; title passed by.*

In this case *held* that the confirmation of a Spanish grant under the act of July 22, 1854, on the application of a town claiming to be the owner, passed the title to that town unburdened with any trust for heirs or grantees of persons named in the original petition and royal decree. *Ib.*

*See* EMINENT DOMAIN, 6;

INDIANS, 2.

## PUBLIC MONEYS.

*See* DISTRICT OF COLUMBIA, 1, 2.

## PUBLIC OFFICERS.

*See* DISTRICT OF COLUMBIA, 1, 2;

PRINCIPAL AND SURETY, 3;

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## PUBLIC RECORDS.

*See* RECORDATION OF INSTRUMENTS, 3.

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*See* CONSTITUTIONAL LAW, 12;

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HOURS OF SERVICE LAW;

RATES;

INTERSTATE COMMERCE;

SAFETY APPLIANCE ACTS;

STATES, 1, 2.

## RATES.

*Illegality where per se reasonable and lawful.*

A rate may be *per se* reasonable and lawful and yet illegal as discriminatory against a shipper or a locality. *Portland Ry. Co. v. Oregon Railroad Commission*, 397, 414.

*See* PRACTICE AND PROCEDURE, 6, 7;

STATES.

## RATIFICATION.

See PHILIPPINE ISLANDS, 5, 6.

## REAL PROPERTY.

1. *Conveyances under decree of court; defective; sufficiency to pass title.*

Deeds made by a public officer in pursuance of a decree of the court which are defective in form by reason of a mistake made by such public officer will pass the title to the property intended to be conveyed, as harmful consequences should not fall upon purchasers, who, in reliance upon apparent regularity have paid their money for the property. *Camp v. Boyd*, 530.

2. *Ground rents defined.*

The term "ground rents" as used in the deeds and proceedings involved in this case did not import merely the rents that were to accrue during the residue of a 99 year lease renewable forever, but included the reversion as well, it appearing that the entire beneficial interest of the owner of the ground rents and the reversion were undoubtedly the subject of the sale and within the contemplation of the buyer and seller. *Ib.*

See BANKRUPTCY, 9, 15, 16;

EQUITY, 1, 4;

PRACTICE AND PROCEDURE, 8.

## RECLAMATION OF ARID LANDS.

1. *Cost of irrigation projects; assessment of; expense of maintenance during Government-held period; act of 1902 construed.*

The history of the Reclamation Act of 1902 shows that it was the intent of Congress that the cost of each irrigation project should be assessed against the property benefited and that the assessments as fast as collected should be paid back into the fund for use in subsequent projects without diminution. This intent cannot be carried out without charging the expense of maintenance during the Government-held period as well as the cost of construction. *Swigart v. Baker*, 187.

2. *Cost of irrigation projects; legislative construction of act of 1902.*

Subsequent legislative construction of a prior act may properly be examined as an aid to its interpretation: and so held that statutes passed since the Reclamation Act of 1902 indicate that Congress has construed the provisions of that act as authorizing the Secretary of the Interior to assess cost of maintenance as well as of construction of irrigation projects upon the land benefited. *Ib.*

3. *Cost of irrigation projects; construction of act of 1902.*

The repeated and practical construction of the Reclamation Act of 1902 by both Congress and the Secretary of the Interior, in charging cost of maintenance as well as construction, accords with the provisions of the act taken in its entirety and is followed by this court. *Ib.*

### RECORDATION OF INSTRUMENTS.

1. *Statutory origin of laws.*

Registration laws are of statutory origin, and, in each case, the applicable statute determines what instruments are to be recorded and where and what the effect is of failure to record. *First National Bank v. Keys*, 179.

2. *Re-recording; effect to require, of act creating new district in Indian Territory.*

An act of Congress creating a new district in the Indian Territory and establishing a clerk's office therein, and which does not expressly so provide, does not require a chattel mortgagee to re-record his instrument in the new clerk's office. *Ib.*

3. *Transfer of records; right of parties not affected by failure of public officer to perform duty as to.*

Where the duty of transferring records of instruments from one clerk's office to another newly established is placed upon the clerk, rights of persons under such instruments are not lost on account of the failure of the clerk to comply with the statute. *Ib.*

### RED LAKE RESERVATION.

*See* INDIANS, 7.

### REGISTRATION.

*See* RECORDATION OF INSTRUMENTS.

### REMEDIES.

*Power of court to grant; presumption against.*

Constant failure to apply for a particular remedy suggests that it is due to conceded want of power in the courts to grant it. *Degge v. Hitchcock*, 162.

*See* ATTACHMENT; EMPLOYERS' LIABILITY ACT, 4;  
CERTIORARI; JURISDICTION, D 3, 4;  
LOCAL LAW (Colo.).



## REMOVAL OF CAUSES.

1. *Proceeding in nature of process.*

Removal proceedings are in the nature of process to bring the parties before the Federal court. *Mackay v. Uinta Co.*, 173.

2. *Proceedings for; regularity; waiver of defects.*

The defendant may waive defects in removal proceedings if jurisdiction actually exists, and if he does so the court will not of its own motion inquire into the regularity of the proceedings. *Ib.*

3. *Functions of state and Federal courts.*

While issues of fact arising on the controverted allegations in a petition for removal are only triable in the Federal court, the state court may deny the petition if it is insufficient on its face. *Chicago, R. I. & P. Ry. Co. v. Dowell*, 102.

4. *Joinder of defendants; fraudulent; motive of plaintiff immaterial.*

Mere averment that a resident defendant, in this case an employé of small means, is fraudulently joined with a non-resident defendant of undoubted responsibility for the purpose of preventing removal by the latter, is not sufficient to raise an issue of fraud in the absence of other averments of actual fraud. The motive of plaintiff in such a case is immaterial; if the right of joinder exists he can exercise it. *Ib.*

5. *Joinder of defendants; propriety question for state court.*

If the state court so decides, a plaintiff may joint tort-feasors even though the liability of one is statutory and the liability of the other rests on the common law. *Ib.*

6. *Joinder of defendants; plaintiff's election.*

If plaintiff alleges that the concurrent negligence of both defendants caused his injury, he may join them in one action; and if he do so the fact that he might have sued them separately furnishes no ground for removal. *Ib.*

7. *Joinder of defendants; propriety question for state court.*

Whether or not defendants are jointly liable depends on plaintiff's averments in the statement of his cause of action, and it is a question for the state court to decide. *Ib.*

## RENTS.

See REAL PROPERTY, 2.

## RESERVATIONS.

*See* INDIANS, 2, 7.

## RES JUDICATA.

*Effect of decree in equity dismissing, on merits, action to have bridge declared obstruction to navigation, as res judicata in criminal proceeding for failure to remove bridge.*

A judgment dismissing, on the merits, an equity action brought by the Secretary of War against a railroad company to declare a bridge over a navigable stream to be an unreasonable obstruction and to require its removal under the act of March 3, 1899, on the ground that the provisions of the act did not apply, *held*, in a criminal trial on an indictment charging the same party with violating the penal provisions of the said act, to be *res judicata* and decisive of the question. *United States v. Baltimore & Ohio R. R. Co.*, 244.

*See* CONGRESS, POWERS OF, 2.

## RESTRAINING ORDERS.

*See* INJUNCTION.

## RESTRAINT OF TRADE.

*See* ANTI-TRUST ACT, 2, 3, 4, 5.

## RESTRAINT UPON ALIENATION.

*See* WILLS, 1, 2.

## RETIREMENT.

*See* ARMY AND NAVY.

## RIPARIAN RIGHTS.

*See* NAVIGABLE WATERS, 4, 5, 11, 12, 13, 15, 16.

## RIVERS.

*See* NAVIGABLE WATERS.

## SAFETY APPLIANCE ACTS.

*Negligence of carrier; when charge sustained.*

Under the Safety Appliance Acts the failure of a coupler to work at any time sustains a charge of negligence on the part of the carrier. (*C., B. & Q. R. R. Co. v. United States*, 220 U. S. 559.) *Chicago, R. I. & P. Ry. Co. v. Brown*, 317.

ST. MARYS RIVER.

*See* NAVIGABLE WATERS, 6, 12, 14.

SALES.

*See* BANKRUPTCY, 9, 15, 16; PATENTS, 1, 6;  
INDIANS, 7; REAL PROPERTY, 1, 2;  
STOCK AND STOCKHOLDERS, 2.

SECOND CLASS MAIL MATTER.

*See* MAILS, 3, 4, 5.

SECRETARY OF THE INTERIOR.

*See* RECLAMATION OF ARID LANDS.

SERVICE OF PROCESS.

*See* ATTACHMENT.

SET-OFF.

*See* BANKRUPTCY, 14, 17, 18, 19;  
CONTRACTS, 3, 5.

SHERMAN ACT.

*See* ANTI-TRUST ACT.

SOVEREIGNTY.

*See* INTERNATIONAL LAW.

SPAIN.

*See* INTERNATIONAL LAW, 3.

SPANISH GRANTS.

*See* PUBLIC LANDS.

SPECIAL APPEARANCE.

*See* ATTACHMENT, 4.

STATEHOOD.

*See* INDIANS, 3.

STATES.

1. *Power to control rates to be charged by intrastate carriers.*

The authority of the States to control by appropriate legislation rates

of fare to be charged by street railways and other common carriers wholly within their borders and subject to their laws is unquestioned. *Portland Ry. Co. v. Oregon Railroad Commission*, 397, 414.

2. *Power to prohibit unjust discrimination by intrastate railroads; delegation of power.*

A State may, without violating the Fourteenth Amendment, prohibit any unjust discrimination by a domestic railroad company against any localities upon its lines; and it may leave it to the Railroad Commission to determine whether the rates are or are not discriminatory, provision being made for notice and judicial review. *Ib.*

See COMMERCE, 1, 3;

CONSTITUTIONAL LAW, 4, 5,  
8, 13;

COURTS, 6;

INDIANS, 3;

NAVIGABLE WATERS, 2, 11, 12;

POLICE POWER;

TAXES AND TAXATION, 2, 3.

## STATUTES.

### A. CONSTRUCTION OF.

1. *Legislative history; consideration of.*

Legislative history of a statute can be examined to enable the court to construe it. *Lewis Publishing Co. v. Morgan*, 288.

2. *Legislative intent; history of statute may be examined in determining.*

A statutory provision for charging cost of construction of an improvement against property benefited may include the cost of maintenance as well as of actual construction; and in determining the scope of the provision the court may arrive at the legislative intent by examining the history of the statute. *Swigart v. Baker*, 187.

3. *Legislative construction; quere as to.*

*Quere* whether Congress may not by legislation construe a prior statute so that as to all matters subsequently arising the action is legislative in character. *Ib.*

4. *Significance of inaction by Congress after repeated construction by executive officer.*

Where the executive officer charged with its enforcement annually reports to Congress the same construction of a statute, it is significant if Congress never has taken any adverse action in regard to such construction. *Ib.*

5. *Paragraphs; reference of provisions in.*

Requirements in the second paragraph of a statutory provision held to apply to articles enumerated in the preceding paragraph when

the words used cannot otherwise be reasonably construed, and when it also appears that as passed by the first enacting chamber the two paragraphs subsequently divided were embodied in one paragraph. *Lewis Publishing Co. v. Morgan*, 288.

6. *Proviso not to be rejected.*

In interpreting a proviso in a statute, it will not be given a meaning that would amount to entirely rejecting it. *United States v. Mille Lac Chippewa Indians*, 498.

7. *Criminal; extension of.*

Criminal statutes ought not to be extended by construction. *United States v. Shelley*, 239.

8. *Departmental Appropriation Act; presumption as to application of provision in.*

A provision in a departmental appropriation act gives rise to the inference that it concerns the general subject under control of that Department. *Lewis Publishing Co. v. Morgan*, 288.

9. *Taxing statutes; primary object; double taxation; limitation of scope.*

A statute which is primarily designed as a taxing act to raise revenue on, and not one to suppress the manufacture of, a specified article, will not be construed so as to subject the same substance more than once to the tax or to require surveillance over places where the secondary treatment is conducted as well as over the factory of primary manufacture. *United States v. Shelley*, 239.

10. *Of statutes relating to territory occupied by military forces of the Government.*

Statutes relating to territory occupied by the military forces of the Government should be construed in the light of the purpose of the Government to act within the principles of international law, the observance of which is essential to the peace and harmony of nations. *MacLeod v. United States*, 416.

See ANTI-TRUST ACT, 1;      MAILS, 5;  
 ARMY AND NAVY, 2;      PATENTS, 2, 4;  
 ATTACHMENT, 3;      PRACTICE AND PROCEDURE, 2, 7;  
 INDIANS, 3, 6;      RECLAMATION OF ARID LANDS.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

## STOCK AND STOCKHOLDERS.

1. *Certificates of stock; character as negotiable securities.*

Stock certificates are a peculiar kind of property; although, strictly speaking, not negotiable paper, they are frequently the basis of commercial transaction and bought and sold in open market as negotiable securities are. (*Bank v. Lanier*, 11 Wall. 369.) *National Safe Deposit Co. v. Hibbs*, 391.

2. *Certificates of stock; sales; principles governing in determining rights of parties.*

The fact that principles affecting the matters involved are well known to business men and are constantly acted upon by them should be given due weight in determining the rights of parties in a transaction relating to the sale of stock certificates. *Russell v. Am. Bell Telephone Co.*, 180 Massachusetts, 467, approved. *Ib.*

See BANKRUPTCY, 2, 3, 4, 5.

## STREET RAILWAYS.

See STATES, 1.

## STREETS AND HIGHWAYS.

See DISTRICT OF COLUMBIA, 2;  
EMINENT DOMAIN, 6.

## TAXES AND TAXATION.

1. *Classification in; implication from power of exemption.*

Power of exemption from taxation seems to imply the power of discrimination; and in taxation, as in other matters of legislation, classification is within the legislative power—and it may be even to a greater extent. *Citizens' Telephone Co. v. Fuller*, 322.

2. *Classification; discrimination in; power of States.*

The numerous decisions of this court reviewed in this opinion illustrate the power of the legislature of the State over the subjects of taxation and the range of discrimination that may be exercised in classification. *Ib.*

3. *Classification; basis for; power of State as to.*

The legislature, having the power of classification, has also the power to select the differences on which to base the classification. *Ib.*

See CONSTITUTIONAL LAW, 14; JURISDICTION, D 6;  
EQUITY, 6; LOCAL LAW (Colo.);  
INTERNATIONAL LAW, 1; PHILIPPINE ISLANDS, 2-6;  
STATUTES, A 9.

## TELEPHONE COMPANIES.

*See* CONSTITUTIONAL LAW, 14.

## TERRITORIAL COURTS.

*See* COURTS, 1;  
JURISDICTION, A 9;  
PRACTICE AND PROCEDURE, 3.

## TESTAMENTARY TRUSTS.

*See* TRUSTS AND TRUSTEES, 2, 3.

## TITLE.

<i>See</i> BANKRUPTCY, 6, 20;	PATENTS, 7;
EMINENT DOMAIN, 13;	PRACTICE AND PROCEDURE, 8, 9;
EQUITY, 1;	PUBLIC LANDS, 3;
NAVIGABLE WATERS, 10-13;	REAL PROPERTY, 1;

## TORT-FEASORS.

*See* REMOVAL OF CAUSES, 5.

## TREATIES.

1. *Construction by political department of government; weight of.*

The construction of a treaty by the political department of the Government, while not conclusive upon a court called upon to construe such a treaty in a matter involving personal rights, is of great weight. *Charlton v. Kelly*, 447.

2. *Violation of; waiver.*

A government can waive violations of a treaty by the other party, and it remains in force until formally abrogated. *Ib.*

*See* EXTRADITION;  
INTERNATIONAL LAW, 3.

## TRIAL.

*See* EXTRADITION, 5;  
INSTRUCTIONS TO JURY, 1.

## TRUSTS AND TRUSTEES.

1. *Interference by court of equity at instance of beneficiaries.*

Trustees having the power to exercise discretion will not be interfered with by a court of equity, at the instance of the beneficiaries, so long as they are acting *bona fide*. *Shelton v. King*, 90.

2. *Testamentary trustees; when court not justified in compelling anticipation of time of payment of legacies.*

In the absence of circumstances and conditions not provided for in the will, there being no question of perpetuities or restriction of alienation and creditors not being concerned, the court should not compel testamentary trustees to anticipate the time of payment of legacies which the testator expressly provided should be held in trust for the legatees until a specified time. *Ib.*

3. *Testamentary trustees; compelling anticipation of time of payment of legacies refused.*

In this case the court refuses to compel testamentary trustees to pay over legacies prior to the time specified in the will although the property bequeathed had vested in the legatees. *Ib.*

*See* INDIANS, 7;

PUBLIC LANDS, 3.

UNITED STATES.

*See* CLAIMS AGAINST THE UNITED STATES;  
COMMERCE, 1, 3;

EMINENT DOMAIN;  
INDIANS, 3, 4, 7.

VENDOR AND VENDEE.

*See* PATENTS.

VERDICT.

*See* ANTI-TRUST ACT, 3;  
NEGLIGENCE, 3.

WAIVER.

*See* BANKRUPTCY, 7; JURISDICTION, C;  
EXTRADITION, 4; REMOVAL OF CAUSES, 2.

WAR.

*See* INTERNATIONAL LAW, 3.

WATER POWER.

*See* NAVIGABLE WATERS.

WATERS.

*See* CONGRESS, POWERS OF, 2, 3;  
EMINENT DOMAIN, 1, 2, 4;  
NAVIGABLE WATERS.



## WILLS.

1. *Bequests free from claims of assignees or creditors; power of testator as to.*

While one may not by his own act preserve to himself the enjoyment of his own property in such manner that it shall not be subject to claims of creditors or to his own power of alienation, a testator may bestow his own property in that manner upon one to whom he wishes to secure beneficial enjoyment without being subject to the claims of assignees or creditors. *Clafin v. Clafin*, 149 Massachusetts, 19, approved. *Shelton v. King*, 90.

2. *Bequests free from claims of creditors; English rule repudiated.*

The courts of this country have rejected the English doctrine that liability to creditors and freedom of alienation are necessary incidents to enjoying the rents and profits from the property by the object of bounty of a testator. *Ib.*

3. *Testamentary intent; duty of court as to.*

One of the highest duties resting upon a court is to carry out the intentions of a testator as expressed in valid provisions not repugnant to well settled principles of public policy. *Ib.*

See TRUSTS AND TRUSTEES, 2.

## WORDS AND PHRASES.

"*Enter*" as used in Post-office Appropriation Act (see Mails, 6). *Lewis Publishing Co. v. Morgan*, 288.

"*Ground rents*" as used in deeds (see Real Property, 2). *Camp v. Boyd*, 530.

"*Persons*" (see Extradition, 1). *Charlton v. Kelly*, 447.

"*Vend*" and "*vending*" as used in §§ 4884, 4952, Rev. Stat. (see Patents, 8, 9). *Bauer v. O'Donnell*, 1.

Generally.—See PATENTS, 4.

## WRIT AND PROCESS.

See ATTACHMENT; EXTRADITION, 11;  
CERTIORARI; JURISDICTION, A 12; C;  
REMOVAL OF CAUSES, 1.